

71 FR 54269, September 14, 2006

A-570-803  
POR: 02/01/04-01/31/05  
Public Document  
IA/9: NB, MR, CR

September 5, 2006

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 14<sup>th</sup> Administrative  
Review of Heavy Forged Hand Tools from the People's Republic  
of China

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the 14<sup>th</sup> administrative review of heavy forged hand tools ("HFHTs") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, 71 FR 11580 (March 8, 2006) ("Preliminary Results").<sup>1</sup>

We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

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<sup>1</sup> The specific calculation changes for Shandong Huarong Machinery Co., Ltd. ("Huarong") can be found in Analysis for the Final Results of the 14<sup>th</sup> Administrative Review of Heavy Forged Hand Tools from the Peoples' Republic of China: Huarong ("Huarong Axes/Adzes Final Analysis Memo"). The specific calculation changes for Shandong Machinery Import & Export Company ("SMC") can be found in Analysis for the Final Results of the 14<sup>th</sup> Administrative Review of Heavy Forged Hand Tools from the Peoples' Republic of China: SMC - Hammers/Sledges ("SMC Hammers/Sledges Final Analysis Memo"); Analysis for the Final Results of the 14<sup>th</sup> Administrative Review of Heavy Forged Hand Tools from the Peoples' Republic of China: SMC - Bars/Wedges ("SMC Bars/Wedges Final Analysis Memo"). The specific calculation changes for Tianjin Machinery Import & Export Corporation ("TMC") can be found in Analysis for the Final Results of the 14<sup>th</sup> Administrative Review of Heavy Forged Hand Tools from the Peoples' Republic of China: TMC ("TMC Picks/Mattocks Final Analysis Memo").

## I. CHANGES SINCE THE PRELIMINARY RESULTS

## II. GENERAL COMMENTS:

- Comment 1: Adverse Facts Available (“AFA”) for “Agent” Sales
- Comment 2: AFA Rate for the Bars/Wedges Order
- Comment 3: Separate Rates for TMC and SMC
- Comment 4: Rejecting the Respondents’ Case Brief
- Comment 5: Addition of an HTS Number to the Scope of the Order
- Comment 6: Application of Packing Materials and the By-product Offset in the Calculation of Normal Value
- Comment 7: Referral to Customs and Border Protection (“CBP”) Regarding Evasion of These Orders by Huarong, TMC and Iron Bull
- Comment 8: Clerical Errors from the Preliminary Results
  - A. Calculation of per unit Importer Assessment Rates
  - B. SMC Missing Packing Variable
  - C. CBP Instructions

## III. COMPANY-SPECIFIC ISSUES:

- Comment 9: Huarong
  - A. Axes/Adzes Rate
  - B. Bars/Wedges Rate
- Comment 10: SMC
  - A. Affiliation Determination
  - B. Partial Adverse Facts Available for Constructed Export Price (“CEP”) Sales
  - C. Rate to Apply to SMC
  - D. AFA for SMC’s Non-Reported Sales
- Comment 11: AFA for Iron Bull’s Sales of Bars/Wedges

## BACKGROUND:

The merchandise covered by the orders are HFHTs as described in the “Scope of the Order” section of the Federal Register notice. The period of review (“POR”) is February 1, 2004, through January 31, 2005. In accordance with section 351.309(c)(ii) of the Department of Commerce’s (“the Department”) regulations, we invited parties to comment on our Preliminary Results. On April 7, 2006, the Respondents,<sup>2</sup> Council Tool Company (“Council Tool”), and the Petitioner<sup>3</sup> filed case briefs. On April 13, 2006, the Respondents and the Petitioner filed rebuttal briefs.

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<sup>2</sup> SMC, Huarong, TMC, and Iron Bull are collectively referred to as “the Respondents.”

<sup>3</sup> Ames True Temper is referred to as “the Petitioner.”

## DISCUSSION OF THE ISSUES:

### I. CHANGES SINCE THE PRELIMINARY RESULTS

Based on a review of the record as well as comments received from parties regarding our Preliminary Results, we have made revisions to the margin calculations for the final results. For the Preliminary Results, the Department inadvertently did not multiply the truck surrogate value and distance by the weight of each factor for SMC, TMC, and Huarong. See Huarong Axes/Adzes Final Analysis Memo; SMC Hammers/Sledges Final Analysis Memo; SMC Bars/Wedges Final Analysis Memo; TMC Picks/Mattocks Final Analysis Memo. Although no parties submitted comments regarding the calculation of truck freight, for the final results the Department revised its truck freight calculation by multiplying the truck freight calculation for each input by the usage rate of each input. The Department also revised the calculation of the freight value for one of SMC's packing factors in the hammers/sledges program. For the Preliminary Results, the Department inadvertently multiplied the distance for one packing factor by the incorrect surrogate value. See SMC Hammers/Sledges Final Analysis Memo.

The Department also notes that in the Preliminary Results the brokerage and handling value for Pidilite Industries Ltd. ("Pidilite") was incorrectly labeled November 1, 2002, through September 30, 2003. See Memorandum from Matthew Renkey, Case Analyst, through Alex Villanueva, Program Manager, Office 9, to the File, 14<sup>th</sup> Administrative Review of HFHTs from the People's Republic of China ("PRC"): Surrogate Values for the Preliminary Results, dated February 28, 2006 ("Surrogate Values Memo") at Exhibits 2 and 12. However, the Pidilite brokerage and handling value was inflated for the correct period of October 1, 2002, through September 30, 2003. See Surrogate Values Memo at Exhibit 12. The Department also notes that the average brokerage and handling surrogate value was incorrectly calculated. See Id. The Department has corrected the brokerage and handling value for these final results. See Memorandum from Matthew Renkey, Case Analyst, through Alex Villanueva, Program Manager, Office 9, to the File, 14<sup>th</sup> Administrative Review of HFHTs from the People's Republic of China ("PRC"): Selection of Surrogate Values for the Final Results, dated September 5, 2006.

The Department made additional changes to the margin programs for SMC, TMC, and Huarong resulting from Comment 8 below.

### II. GENERAL ISSUES

#### Comment 1: Adverse Facts Available ("AFA") for "Agent" Sales

Citing to the Department's memoranda applying AFA to Huarong and TMC for the Preliminary Results, Council Tool notes in its case brief that several of the Respondents were involved in "agent" sales arrangements that resulted in the evasion of the correct cash deposit and in the potential evasion of the correct assessment of antidumping duties required under section 731 of

the Tariff Act of 1930, as amended (“the Act”). See Memorandum to the File, through James C. Doyle, Director, Office 9, from Alex Villanueva, Program Manager, Office 9, and Matthew Renkey, Case Analyst: 14<sup>th</sup> Administrative Review of Heavy Forged Hand Tools from the People’s Republic of China: Application of Adverse Facts Available to Shandong Huarong Machinery Corporation Ltd. and Memorandum to the File, through James C. Doyle, Director, Office 9, from Alex Villanueva, Program Manager, Office 9, and Matthew Renkey, Case Analyst: 14<sup>th</sup> Administrative Review of Heavy Forged Hand Tools from the People’s Republic of China: Application of Adverse Facts Available to Tianjin Machinery Import & Export Corporation, both dated February 28, 2006 (“Huarong AFA Memo” and “TMC AFA Memo,” respectively). Council Tool also argues that the Department correctly determined that Huarong and TMC impeded the Department’s ability to conduct an administrative review pursuant to section 751 of the Act. Council Tool concludes by stating that both companies should continue to receive total AFA for those orders in which they had “agent” sales.

The Petitioner states that in the Preliminary Results, the Department correctly applied AFA to TMC, Iron Bull, and Huarong because of their participation in “agent” sales schemes during the POR. The Petitioner contends that because these companies have failed to cooperate to the best of their abilities with the Department’s requests for information, withheld information, and otherwise impeded the investigation by committing customs fraud, the Department should continue to apply AFA to all three companies in its final results. However, the Petitioner argues that the Department erroneously applied AFA to the above exporters based on the type of subject merchandise exported. Specifically, the Petitioner notes that the Department found that TMC had agent sales with regard to three of the four categories of subject merchandise and only applied AFA to those three categories of sales. The Petitioner argues that the Department should also apply AFA to TMC’s sales of picks/mattocks because customs fraud is conducted by the company as a whole – not just the division that produces a certain type of merchandise, and the Department must take measures to prevent injuries that will be caused by future occurrences of agent schemes.<sup>4</sup>

The Petitioner argues that given TMC’s blatant disregard for U.S. antidumping laws via its “agent” sales scheme for axes/adzes, bars/wedges, and hammers/sledges, the accuracy of TMC’s reported sales of the fourth category of subject merchandise, picks/mattocks, is highly questionable. The Petitioner contends that this is further supported by the fact that TMC, as a

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<sup>4</sup> The Petitioner cites to the U.S. Court of Appeals for the Federal Circuit (“CAFC”), that the purpose of United States antidumping laws is to remedy situations “{W}here dumping of foreign goods in the United States occurs, or is likely to occur, . . . {by} set{ting} into operation machinery by which said merchandise will pay an equalizing duty, by means whereof industry in the United States will not be likely to be injured or **be prevented from being established**” (emphasis added). See C.J. Tower & Sons v. United States, 71 F.2d 438, 425 (C.C.P.A. 1934). In other words, contends the Petitioner, the U.S. antidumping scheme was constructed to remedy injuries inflicted upon U.S. industries by dumping, and to prevent those injuries from occurring in the future. The Petitioner notes that the courts have also recognized that “{t}he ITA has {a} certain amount of discretion {to act} . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.” See i.e., Tung Mung Development v. United States, 219 F. Supp. 2d 1333, 1343 (Ct. Int’l Trade 2002) (“Tung Mung”); see also TMC AFA Memo.

whole company, sells all four types of subject merchandise, and that there is no indication that TMC segregates its sales of picks/mattocks from other types of subject merchandise, thus shielding that merchandise from being sold through an “agent” scheme. The Petitioner argues that by assigning any rate lower than the AFA rate, the Department merely opens the door to the next “agent” scheme, and contends the Respondents have demonstrated over the course of several administrative reviews that they will not hesitate to employ such schemes. As such, the Petitioner argues, AFA should be applied to the company as a whole in the final results of this review.

The Respondents argue that the Department should not apply an AFA rate to “agent” sales because the Respondents fully cooperated and accurately disclosed their “agent” sales. Instead, the Respondents proffer that the Department has the authority and should utilize combination rates. The Respondents also contend that the Department denied them due process by applying AFA rates to all of their sales, and not just their “agent” sales.<sup>5</sup>

The Respondents state that the Department has failed to acknowledge that similar agent sales occurred in prior reviews and were included in the record in the form of copies of verification reports from those prior reviews. The Respondents note that Huarong made the distinction from its first response in this review that there were direct sales and “agent” sales. In both the 2000-2001 review and the 2001-2002 review, the Respondents state that the Department treated the “agent” sales as Huarong sales.

The Respondents argue that the Department’s finding, under section 776(a)(2)(C) of the Act, that Huarong significantly impeded this proceeding is not supported. The Respondents offer rebuttals to the three reasons listed by the Department in the Huarong AFA Memo for why an adverse inference was warranted. In response to the first reason cited by the Department, that Huarong misrepresented the nature of its arrangement with Company A by portraying Company A as a bona fide agent for Huarong’s “agent” sales of bars/wedges to the United States, the Respondents state that it did not misrepresent the nature of its arrangement. Huarong notes in its section A submission, filed on May 13, 2005, that it made sales through an agent, and provided a copy of its agent agreement in its June 3, 2005, submission. Huarong notes that it also included a copy of previous verification reports where similar “agent” sales were made.

In response to the second reason, that Huarong participated in a scheme that resulted in circumvention of the antidumping duty order, the Respondents note that it requested an administrative review, and that it reported all of its sales, including those of its “agent.” The Respondents state that Huarong reported all of the information required to calculate dumping margins and did not in any way seek to have its importer avoid dumping duties. The Respondents contend that if Huarong wanted to circumvent the order, it would not have

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<sup>5</sup> The Respondents state that to minimize the length of the arguments, they will not separately present arguments on behalf of TMC and Iron Bull but note that they are similar to those of Huarong and should be treated as such by the Department.

requested a review and would not have provided complete and timely and accurate submissions regarding its FOPs and its sales, both direct and those for its “agent.”

In response to the third reason, that the existence of such a scheme during the POR undermined the Department’s ability to calculate accurate antidumping duties, the Respondents argue that nothing Huarong did “undermined” the Department’s ability to “impose accurate antidumping duties.” The Respondents contend that the Department’s action with regard to Huarong (and its agent) has no relation to whether Huarong cooperated in answering the questions during this review. The Respondents claim that from the Preliminary Results, it appears that the Department is using the “agent” sale issue as an excuse to fix the cash deposit problem, while it is clear from the record that none of the Respondents ever filed entries with CBP, nor had any entry documents in their files. The Respondents state that the Department also did not cite any instance where any Respondent violated U.S. or Chinese laws. The Respondents argue that the impact of the Department’s decision is not to correct a problem, but rather to penalize the Respondents’ importers, irrespective of the type of information that may have been included on the CBP entry documentation filed.

The Respondents note that the use of AFA is intended to encourage parties to respond to requests for information. While the statute authorizes the Department to use an adverse inference in the selection of facts available, the Respondents state that before it may apply adverse facts, the Department must make the additional finding that the party has “failed to cooperate by not acting to the best of its ability” and must “explain why it concluded that a party failed to comply to the best of its ability” (see *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1332 (Ct. Int’l Trade 1999) “Ferro Union”) and “explain why the absence of this information is of significance to the progress of its investigation.” See *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp. 2d 1310, 1332 (Ct. Int’l Trade 1999) (“Mannesmannrohren-Werke AG”). The Respondents state that the new statutory scheme “was designed to prevent the unrestrained use of facts available as to a firm that makes its best efforts to cooperate with Commerce.” See *World Finer Foods, Inc. v. United States*, Consol. Court No. 99-03-00138, Slip Op. 00-72, dated June 26, 2000, citing *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1245 (Ct. Int’l Trade 1998), *aff’d sub nom. F. LLI De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, No. 99-1318, 2000 (Fed. Cir. June 16, 2000). The Respondents argue that the failure to respond is only a basis for using facts available, not adverse facts, and that the same is true with respect to “significantly impeding the review.” See *Ferro Union* at 1330.

With regard to the agent sales agreement, the Respondents note that the Department has not claimed that Huarong’s “agent” agreement did not accurately reflect the transactions that took place pursuant to the agreement. The Respondents further state that the Department addressed similar situations in prior reviews and considered that the “agent” sales should be treated as sales of the principal (the party that retained title until the merchandise was sold to the unaffiliated U.S. importer). The Respondents state that it is unclear why the Department tries to draw a distinction between a true agent and a quasi-agent, or tries to draw a distinction based on title, noting that 1) agents generally do not take title to the goods for which they act as an agent; 2)

setting prices, negotiating contracts, etc., are responsibilities of the principal, not the agent; and 3) the principal, not the agent, generally determines the functions an agent will perform. The Respondents state that the Department has not cited any regulation or other provision that defines an “agent” or what an agent may or may not do in the context of the antidumping law. While the Department may not condone certain activities, the Respondents contend that the Department should address such activities through the process of rulemaking, and that parties should be advised of what activities are appropriate.

The Respondents state that, since the Department’s concern seems to revolve around cash deposit rates, the solution is for the Department to exercise its authority, as provided in its regulations (19 CFR 351.107), to set exporter/producer specific cash deposit rates, and that the Department and CBP should require that both the exporter and the manufacturer be identified and rates set accordingly.

The Respondents state that they did not file any entries with CBP nor provide any other information to CBP during the POR. The Respondents state that they reported export sales of subject merchandise to Chinese government agencies in accordance with Chinese law, and that no claim has been made to the contrary. The Respondents argue that the Department has not identified a misrepresentation that would affect the calculation of dumping margins. The Respondents agree that where the principal does not cooperate, the Department should assess the AFA rate. Where, for example, Company A acts as an agent for Huarong and the sales are fully reported and the FOPs are fully reported, the Department should treat those sales as Huarong’s sales and calculate the dumping margins accordingly. The Respondents proffer that combination rates would remedy this issue by simply requiring the importer to identify the supplying producer, and avoid the Department having to explore “agent” sales. The Respondents state that this approach avoids penalizing exporters that are not affiliated with the importer and cannot be held responsible for the actions of importers.

In its rebuttal brief, the Petitioner argues that the Department correctly determined that the Respondents who participated in agent sales schemes, Huarong, TMC, and Iron Bull, significantly impeded the proceeding. Furthermore, argues the Petitioner, the use of combination rates, as suggested by the Respondents, is not an appropriate solution to the problem of agent schemes. Accordingly, the Petitioner contends that the Department should continue to apply the AFA rate to the above-mentioned respondents for the final results.<sup>6</sup>

The Petitioner argues that the Respondents’ claim that they should not be assigned an AFA rate for their agent sales is, as in prior reviews, without merit. The Petitioner states that the Respondents are receiving AFA because they have engaged in wholesale fraud against the Department and CBP. The Petitioner contends that the record evidence demonstrates that the “agent” contracts between the respondents and their “agents” were simply a ruse for companies

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<sup>6</sup> The Petitioner agrees with the Respondents that the issues regarding the agent sales of TMC and Iron Bull are similar to those involving Huarong; therefore, the Petitioner has not separately addressed the “agent” sales made by TMC and Iron Bull.

with low dumping margins to “rent” their margins out to companies with higher antidumping duty rates, in order to evade the antidumping duties. See Huarong AFA Memo at 5. The Petitioner contends that there was no way for CBP officials to tell from the entry documentation that Company A was not the actual exporter for the entries in question. As such, the Petitioner argues that the Department is entirely correct in stating that the Respondents “continually misrepresented the nature” of their agent sales, and therefore did not cooperate to the best of their ability in these proceedings, which alone justifies AFA.

Furthermore, the Petitioner states that even a fully disclosed agent scheme is illegal and can only be corrected through the application of adverse facts available. The Petitioner notes that although the Respondents may call their scheme a bona fide business arrangement, a bona fide business arrangement to evade the antidumping laws is just as illegal as a bona fide business arrangement to fix prices or steal intellectual property, and that the Respondents are by now fully aware that their agent scheme does in fact violate U.S. law and regulations. The Petitioner notes that section 776(a)(2) of the Act states that the Department may use facts available if an interested party withholds information that has been requested by the Department, or significantly impedes a proceeding, and that adverse inferences are warranted if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The Petitioner states that the agency scheme significantly impedes the antidumping proceeding, by preventing the Department from properly assigning sales to the correct manufacturer or exporter, and by preventing the Department and CBP from assessing the proper levels of duties and deposit rates against those manufacturers or importers. The Petitioner notes that the Department has made exactly these findings, not only in the prior administrative review of HFHTs, but also in other cases of fraudulent activity undermining an antidumping proceeding. See, i.e., *Certain Preserved Mushrooms From the People’s Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41307 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1. In particular, the Petitioner notes that the Department has stated that if a respondent is serving as a conduit for other producers, that it will consider this a case of potential evasion of the antidumping order and will take appropriate action. See *Certain Fresh Cut Flowers From Mexico*, 62 FR 27219-27220 (May 19, 1997).

As the CIT noted in *Tung Mung*, the Petitioner states that the Department has a responsibility to apply its law in a manner that prevents the evasion of antidumping duties: “The ITA has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has a certain amount of discretion {to act} . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.” See *Tung Mung*, 219 F. Supp. 2d 1333, 1343 (Ct. Int’l Trade 2002), *aff’d* 354 F.3d 1371 (Fed. Cir. 2004) (citing *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (Ct. Int’l Trade 1988), *aff’d* 898 F.2d 1577 (Fed. Cir. 1990)). The Petitioner argues that as this case and others make clear, AFA is an appropriate, and even necessary, response to evasion or other fraudulent



activity, even if “fully disclosed,” as the Respondents claim.

The Petitioner states that the Respondents noted in their case brief that the same activity had continued, unpunished by the use of AFA, in prior administrative reviews, including 2000-2001 and 2001-2002. The Petitioner notes, however, that in the immediately preceding review, the Department found that the Respondents evaded antidumping duties via an “agent” sales scheme and imposed AFA as a result.

In response to Huarong’s claim that “nothing that Huarong did ‘undermined’ the Department’s ability to ‘impose accurate antidumping duties,’” the Petitioner maintains that Huarong’s purpose was to do exactly that, by participating in a system that allowed for the systematic avoidance of antidumping duties by the Respondents and importers. The Petitioner states that the Department documented well the scheme in the previous administrative review, and the same purpose – to undermine the imposition and collection of duties – still exists. The Petitioner argues that if the Respondents are allowed, in the guise of an agency agreement, to rent out or borrow margins from companies that have either very low margins or owe much larger antidumping duties, then the entire intent and purpose of the antidumping laws has been thwarted. The Petitioner contends that evasion of antidumping duties, even through a fully disclosed agency scheme, requires the imposition of total AFA.

The Petitioner strongly disagrees with Respondent’s suggestion that combination rates will fix the problem. As the Department noted, the Respondents were aware of and actively participated in this scheme. See Huarong AFA Memo. The Petitioner contends that the problem is not the cash deposit rates, but the assessment instructions. The Petitioner states that the Department’s ability to “impose accurate margins” relies on the proposition that the exporter/importer-specific assessment instructions it submits to CBP for enforcement are based on accurate information supplied by the Respondent and will match to information that CBP has in its database. The Petitioner argues that the Respondent’s fraudulent scheme attacks that proposition by seeking to exploit the opportunity for the importer to inform CBP that one party is the exporter while the Respondents inform the Department that another party is the exporter. The Petitioner concludes that because the Respondents have impeded this proceeding by participating in agent sales schemes, the Department should apply AFA to these Respondents in the final results, and urge CBP to follow up on any acts of customs fraud immediately.

In their rebuttal brief, the Respondents reference the same court cases regarding the application of facts available and AFA. The Respondents state that the only relevant question is whether the Respondents’ failure to provide certain requested information constituted anything more than mere “inadvertent error.” See Mannesmannrohren-Werke AG. Moreover, the Respondents argue that it is unreasonable to require perfection in their responses. See *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995). The Respondents state that they cooperated to the best of their ability by reporting their data as completely and accurately as possible, as can be demonstrated, Respondents argue, by the multiple questionnaire responses submitted as per the Department’s requests.

The Respondents argue that the Petitioner's case brief makes the unsupported allegation that the Department should apply AFA to each company for all four categories of subject merchandise because customs fraud is conducted by the company as a whole— not just the division that produces a certain type of merchandise. The Respondents contend that Petitioner has failed to produce a single instance in which the Department has followed such an unprecedented application of AFA, and that the Petitioner's suggestion that the Department apply AFA to TMC for all four categories of subject merchandise should be rejected.

#### Department's Position:

We agree with the Petitioner, in part.

In the Preliminary Results, the Department fully explained its reasons for applying total AFA with regard to Huarong's, TMC's, and Iron Bull's participation in their respective "agent" sales schemes. The Department stated that, pursuant to sections 776(a)(2)(C) and 776(b) of the Act, the Department has determined that it is appropriate to base these Respondents' dumping margins for their "agent" sales on AFA because they have significantly impeded the instant proceeding. Specifically, these Respondents' participation in the "agent" sales scheme impeded this proceeding under section 751 of the Act by hindering our ability to impose the correct antidumping duties as mandated by section 731 of the Act, and by undermining the integrity of the administrative review process. See Huarong AFA Memo, TMC AFA Memo, and Iron Bull AFA Memo.

The Department disagrees with the Respondents' claim that they did not misrepresent the true nature of their relationship with the "agent" or principal or that the agreement accurately describes the arrangement. After reviewing the record evidence, the Department found that the Respondents continually misrepresented the true nature of their relationship with their principal or "agent," as appropriate, by claiming that such relationships were bona fide business arrangements. However, through the Respondents' original and supplemental questionnaire responses, the Department learned that nearly all of the sales functions were conducted by the principal, and that the "agent's" participation was limited, for the most part, to supplying invoices to the principal with an intention to circumvent the order. Because the "business arrangement" has the effect of circumventing the antidumping duties, we find that such an arrangement is not a bona fide business arrangement. Whether or not such a scheme may be permissible under PRC law is irrelevant; the Department examines the relevant transactions pursuant to the Act and the Department's regulations. Furthermore, the PRC "agent" sales regulations submitted by Huarong as Appendix 3 in its June 3, 2005, response (both the original Chinese version and an English translation), contravene Huarong's claim that its "agent" sales arrangement is in accordance with PRC law and is a bona fide business arrangement under PRC law. Huarong states on page Ap-1 of its June 3, 2005, submission that it alone negotiates the material terms of sale, and confirmed this on page one of its February 3, 2006, submission. However, Article 8 of the PRC regulations states that "{u}pon approval of the Trustee, Entrusting party can participate in foreign negotiation meetings, but not allowed to inquiry or

execute commercial negotiation by itself, not allowed to make any commitment in any form to the customer on any items of the contract.”<sup>7</sup> Thus, Huarong’s statement that it alone handles sales negotiations appears inconsistent with Article 8 of the PRC regulations governing agent sales.

Contrary to the Respondents’ assertion that they had no role before CBP, the Department, in its examination of the Respondents’ questionnaire responses,<sup>8</sup> learned that Huarong, TMC and Iron Bull supplied to their respective importers certain documents that prevented CBP officials from recognizing that the principal, rather than the “agent,” is the company actually selling the merchandise to the U.S. importer. Because these documents prevented CBP from knowing the true seller in these “agent” sales, the assessment rate calculated by the Department would be rendered meaningless because it would not be applied to all appropriate entries. Thus, the Department finds that the existence of these “agent” sales schemes, in which Huarong, TMC, and Iron Bull actively participated, undermines our ability to issue instructions to CBP to assess accurate antidumping duties, and impose antidumping duties, pursuant to the Department’s statutory mandate under sections 731 and 736 of the Act. Thus, the Respondents were complicit in an arrangement designed to circumvent the applicable antidumping duty orders.

The Department again disagrees with the Respondents’ contentions that the Department was incorrect in its finding that the Respondents undermined the Department’s ability to issue instructions to CBP to assess accurate antidumping duties, and with their claim that the Department’s decisions with regard to Huarong, TMC, and Iron Bull bear no relation to whether these companies cooperated in answering the questions during this review since these companies reported their “agent” sales to the Department. The record evidence gathered by the Department demonstrates that the “agent” sales arrangement resulted in an incorrect, lower cash deposit being collected at the time of entry. Accordingly, the Department finds that Huarong’s, TMC’s, and Iron Bull’s respective “agent” sales schemes would have, absent corrective action, undermined the Department’s ability to issue correct and effective instructions to CBP to impose accurate cash deposit and assessment rates, since such arrangements result in the misidentification of the true exporter when the shipments enter the U.S. market.

Regarding Respondents’ contention that the Department should exercise its authority to set exporter/producer specific cash deposit rates (combination rates), we disagree that this represents a solution to the “agent” sales schemes. Petitioners correctly note that the Department’s ability to

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<sup>7</sup> In the PRC regulations regarding agent sales, the “Trustee” is the term used to identify the agent, while the “Entrusting party” refers to the principal (in this case, Huarong).

<sup>8</sup> See Huarong’s June 3, 2005, response at 1-2 and Appendices 1 and 2, Huarong’s October 31, 2005 response at Exhibit 6, Huarong’s, and Huarong’s February 3, 2006, response at 1; see also TMC’s May 27, 2005, response at 45-48 and appendices 2 and 3, TMC’s June 16, 2005, response at Exhibit 6, TMC’s July 27, 2005, response at 2-3 and Exhibits 2 and 3, TMC’s September 1, 2005, response at 2 and 4-5, TMC’s October 25, 2005, response at Exhibit 6, TMC’s December 15, 2005, response at 4 and Exhibit 7, and TMC’s February 16, 2006, response at 3 and Exhibit 3; see also Iron Bull’s May 13, 2005 response at 1, Iron Bull’s June 3, 2005 response at Appendix VII, Iron Bulls June 16, 2005 response at App-2 to App-3, Iron Bull’s July 27, 2005 response at 17-18 and Exhibit 1, Iron Bull’s August 8, 2005 questionnaire response at 4 and Exhibit D-14.

impose accurate antidumping duty margins relies on the proposition that the assessment instructions we submit to CBP are based upon accurate information and will correspond to the data collected by CBP. See Petitioner's rebuttal brief at 12. The "agent" sales schemes undertaken by Respondents undermine this proposition by allowing the importer (via an invoice from the "agent") to inform CBP that one party is the exporter while another party is reported as the exporter to the Department. Id. We also addressed the issue of combination rates in the 13<sup>th</sup> administrative review and noted that:

The Department recently announced that, in non-market economy ("NME") investigations, the Department would begin assigning rates to specific exporter-producer combinations where an exporter receives a separate rate. See Separate Rates and Combination Rates in Antidumping Duty Investigations Involving Non-Market Economy Countries, 70 FR 17233 (April 5, 2005). This proceeding is not an investigation and TMC is an exporter not a producer, while Huarong is a producer which acts as its own exporter. Accordingly, the Respondents do not warrant combination rates under the Department's combination rates practice.

See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897 (September 19, 2005) ("13<sup>th</sup> HFHTs Final") and accompanying Issues and Decision Memorandum at Comment 7. We further noted that "issuing exporter/producer specific cash deposit rates would not address circumvention, but at best, would amount to an application of only partial AFA." Id.

We also disagree with the Respondents' argument that the application of AFA for Huarong's, TMC's and Iron Bull's "agent" sales was inappropriate because in previous reviews the Department accepted similar "agent" sales as bona fide business arrangements. While the Department's understanding and treatment of the "agent" sales schemes has been evolving, after examination of the previous reviews, we note that in the most recent reviews the Department has previously disregarded similar "agent" sales as not being bona fide business arrangements. See 13<sup>th</sup> HFHTs Final and accompanying Issues and Decision Memorandum at Comment 2; Heavy Forged Hand Tools, With or Without Handles, Finished or Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part, 69 FR 55581 (September 15, 2004) ("12<sup>th</sup> HFHTs Final") and accompanying Issues and Decision Memorandum at Comment 19; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Heavy Forged Hand Tools from the People's Republic of China, 67 FR 57789 (September 12, 2002) ("10<sup>th</sup> HFHTs Final") and accompanying Issues and Decision Memorandum at Comment 12; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Heavy Forged Hand Tools from the People's Republic of China, 66 FR 48026 (September 17, 2001) ("9<sup>th</sup> HFHTs Final") and accompanying Issues and Decision

Memorandum at Comments 1 & 2. As is abundantly clear, in recent review periods, our practice has been to apply total AFA to respondents involved in “agent” sales arrangements in a particular order. See 12<sup>th</sup> HFHTs Final and 13<sup>th</sup> HFHTs Final.

Based on the above circumstances, the Department continues to find that facts available are appropriate, under section 776(a)(2)(C) of the Act, as Huarong, TMC, and Iron Bull significantly impeded this proceeding. The Department also continues to find that in selecting from among the facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted because the Department has determined that Huarong, TMC, and Iron Bull failed to cooperate by not acting to the best of their ability to comply with our requests for information. Specifically, for these companies, an adverse inference is warranted because they: (1) continually misrepresented the true nature of their principal/“agent” relationships during the POR by portraying their “agent” sales scheme as a bona fide arrangement; (2) participated in an “agent” sales scheme in order to avoid payment of the appropriate cash deposit and assessment rate and circumvent the antidumping duty order; and (3) undermined our ability to issue instructions to CBP to assess accurate antidumping duties. See Huarong AFA Memo, TMC AFA Memo, and Iron Bull AFA Memo.

Furthermore, the Department disagrees with Respondents’ argument that they were denied due process by the Department’s application of AFA to all of their sales, and not just their “agent” sales. Respondents were informed of the Department’s preliminary decision to apply AFA and had full opportunity to comment upon the Department’s decision to apply AFA to all sales. In prior reviews of this case, the Department applied AFA to all of a respondent’s sales under a particular order if that company had been participating in an “agent” sales scheme. See, e.g., the 12<sup>th</sup> Review Final and 13<sup>th</sup> Review Final. The CIT has also recently upheld the application of AFA to all of a respondent’s sales in a particular order where there were “agent” sales. See *Shandong Huarong Machinery Co., Ltd., Shandong Machinery Import & Export Corporation, Liaoning Machinery Import & Export Corporation, and Tianjin Machinery Import & Export Corporation v. United States*, Slip Op. 06-88 (CIT June 9, 2006). For those orders where “agent” sales schemes existed, the “agent” sales represented the majority percentage (in terms of value) of each company’s U.S. sales in all but one instance.<sup>9</sup> The Respondents should be well aware, after several administrative determinations and court rulings regarding “agent” sales schemes, that activities designed to circumvent antidumping duty orders are not appropriate.

Lastly, we find that the Petitioner’s argument that we should apply total AFA to the Respondents in all orders, whether or not they engaged in “agent” sales arrangements, to be without merit, as there is no record evidence to suggest that such an action is warranted. Accordingly, the Department is continuing to assign total AFA to Huarong, TMC, and Iron Bull in those orders in which there is substantial evidence that they participated in “agent” sales schemes.

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<sup>9</sup> For Iron Bull, its “agent” sales of bars/wedges amounted to slightly less than half of its total bars/wedges sales by value. As discussed below in Comment 11, the Department is applying AFA to Iron Bull for the bars/wedges order for additional reasons beyond the “agent” sales arrangement.

## Comment 2: AFA Rate for the Bars/Wedges Order

The Respondents assert that the AFA and PRC-wide rate of 139.31 percent for sales of bars/wedges is unreasonable and must be discarded, because it contains subsidized prices and it is calculated based on information from “a different factory, for different bars, by a different seller with different input steel, and unverified data.” In addition, the Respondents claim that the selected AFA is punitive, and it does not reflect a reasonable antidumping margin, and should not be applied to Huarong.

The Respondents assert that the Department has rejected prices in previous cases where there were generally available subsidies. The Respondents argue that the Department has stated that, where the facts of a U.S. or third-country finding are sufficient to allow the Department to infer that there are generally available subsidies, the Department will consider that it has particular and objective evidence and, therefore, a reason to believe or suspect that prices of the input from that country are subsidized. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, (“TRBs from the PRC II”) 67 FR 68990 (November 14, 2002) and accompanying Issues and Decision Memorandum at Comment 25. According to the Respondents, the court has upheld this practice by the Department. See *China National Machinery Import & Export v. United States*, Court No. 01-01114, Slip Op. 03-16 (February 13, 2003) (“China National”).

Specifically, the Respondents note that the Department has previously determined that Indian export data cannot be used for surrogate values because of Indian subsidies and that South Korea, Thailand, and Indonesia maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets. See, e.g., Memorandum to Thomas F. Futtner, from Thomas E. Martin: Surrogate Values Used for the Preliminary Results of the Eleventh Administrative Reviews of Certain Heavy Forged Hand Tools (Bars/Wedges) From the People's Republic of China – February 1, 2001 through January 31, 2002, dated February 28, 2003, at Comment 2. Further, the Respondents note that the Department has also found that there was sufficient reason to believe or suspect that steel prices in the United Kingdom, Belgium, Canada, and Germany are subsidized. See Certain Helical Spring Lock Washers from China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part, 69 FR 12119 (March 15, 2004) (*Lock Washers from China*). The Respondents contend that the Department, due to its subsidy suspicion policy,<sup>10</sup> should

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<sup>10</sup> The Respondents state that the Department's subsidy suspicion policy is based on the legislative history to the 1988 amendments of the antidumping statute and requires the Department to reject subsidized surrogate values and market-economy supplier prices. They further note that the Conference Report on the 1988 amendments which added the NME methodology provision to the statute, provides that the Department shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices. However, the Respondents indicate that the conferees do not intend for the Department to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intended that the Department base its decision on information generally available to it at that time.

revise the AFA rate of 139.31 percent and exclude imports from these countries from the Indian import data used to calculate the surrogate values in the eighth review.

The Respondents also argue that the Department must exclude from the Indian import statistics used in the eighth review any Indian imports from the United States because U.S. exports are subsidized. According to the Respondents, the World Trade Organization (“WTO”) has determined that the U.S. Foreign Sales Corporation/Extraterritorial Income Exclusion (“FSC/ETI”) tax scheme is a WTO-illegal subsidy and the United States has agreed to implement the WTO’s ruling. In light of these facts, the Respondents argue that the United States must be deemed to have export subsidies as well. The Respondents state that the Department’s subsidy suspicion policy requires the Department to reject surrogate values and market-economy supplier prices that are subsidized. Since the WTO has found the FSC/ETI tax scheme to be an illegal subsidy, the Respondents conclude that the Department must revise its AFA rate and exclude U.S. data from the Indian import statistics used to calculate the surrogate values in the eighth review.

The Respondents also argue that the AFA and PRC-wide rate is not appropriate because it was based on a different factory, for different bars, by a different seller, with a different steel input, and unverified data. The Respondents argue, citing Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1340 (Fed. Cir. 2002), that the Department must select an AFA rate that has a relationship to the actual sales information. Moreover, the Respondents claim that the Department cannot select unreasonably high AFA rates that have no relationship to a respondent’s actual dumping margin. See F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027,1032 (Fed. Cir. 2000).

The Respondents also contend that they fully disclosed every sale of subject merchandise during the POR with which the Respondents were involved, except for those where there is a scope issue pending. The Respondents argue that the Department can calculate and assess dumping margins on all of the sales made by Huarong, including agent sales.

For these reasons, the Respondents assert that the selected AFA rate is unreasonably high with no relationship to their actual dumping margins and should therefore be revised.

The Petitioner contends that the Respondents have in the instant review raised the very same subsidy arguments they unsuccessfully raised in the prior reviews. The Petitioner notes that the Respondents’ subsidy arguments have not only been rejected by the Department, but have also been rejected by the reviewing courts. According to the Petitioner, the Respondents’ claims are based on the premise that virtually any allegation of a country maintaining generally-available export subsidies qualifies as a reasonable basis for disregarding that country’s commodity prices. The Petitioner argues that the Department has already addressed this issue in its final determination in the eleventh review where it stated that the Department “does not have a policy of excluding all surrogate country import prices for FOP that are exported by countries that may have generally-available subsidies, whether for domestic production or export sales.” See Heavy

Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges, 68 FR 53347, (September 10, 2003), and the accompanying Issues and Decision Memorandum (“11<sup>th</sup> Hand Tools Memo”) at Comment 2. As such, the Petitioner contends that the Department need not consider every single subsidy program from every country. Further, the Petitioner notes that while the Department may consider the applicability of valuing prices pertaining to imports from Belgium, Canada, Germany, and the United Kingdom, the Respondents have never objected to the Department’s decision to include these imports in the calculation of the surrogate values during the eighth review and subsequent appeals process.

Moreover, the Petitioner argues that the Department has determined that the opportunity to challenge the 139.31 percent rate for bars/wedges calculated from the eighth review has passed. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Partial Rescission of Antidumping Duty Administrative Review, and Determination Not to Revoke in Part, 69 FR 55581, (September 15, 2004), and the accompanying Issues and Decision Memorandum (“12<sup>th</sup> Hand Tools Memo”) at Comment 21. The Department reiterated in the 13<sup>th</sup> review, the Petitioner notes, that the opportunity has passed for the Respondents to challenge the rate, and considered the subsidy issue moot because the AFA rate was applied to those Respondents who engaged in agent sales schemes. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897 (September 19, 2005), and accompanying Issues and Decision Memorandum (“13<sup>th</sup> Hand Tools Memo”), at Comment 4.

With respect to the FSC/ETI tax scheme, the Petitioner notes that the Respondents cite no precedent in which the Department has ever excluded imports of U.S. merchandise on these grounds. Furthermore, the Petitioner submits that a WTO determination that the FSC tax exemption violates WTO rules does not satisfy the Department’s “reason to believe or suspect” standard. Citing China Nat’l Mach. Imp. & Exp. Corp. v. United States, 264 F. Supp. 2d 1229, 1239 (Ct. Int’l Trade 2003), and 19 U.S.C. § 1677b(b)(1) (2000), the Petitioner claims that the Department’s “reason to believe or suspect” standard requires “particular, specific, and objective evidence” that subsidies at issue were utilized in the production of the product, thus distorting the normal value. In this instance, the Petitioner argues that the mere fact that FSC exists does not satisfy the Department’s standard because there is no evidence on the record that the U.S. producers of these imports have benefitted from the FSC program. Moreover, the Petitioner contends that if the FSC/ETI tax scheme provided such a financial contribution and a benefit to U.S. producers, then the Indian import prices are erroneously low and should be increased for purposes of an actual market comparison. Use of the data is thus conservative. The Petitioner states that absent any concrete record evidence, the Department should not hesitate to reject the Respondents’ claims.

Regarding the Respondents’ argument that the AFA and PRC-wide rate was based upon “a



different factory, for different bars, by a different seller with different input steel, and unverified data,” the Petitioner argues that the Respondents are attempting to restrict the Department’s ability to use FA, contrary to the intent of Congress. The Petitioner argues that the Department is not bound to assigning particular producer/exporter AFA rates or to providing a rate that is specific to each model of merchandise or method of production. To the contrary, the Petitioner contends that an AFA rate must be one that does not serve as a benefit to a non-responding party given that the very nature of the AFA methodology is to induce cooperation from non-cooperative parties. Additionally, the Petitioner asserts that the Department assumes that if an uncooperative respondent could have demonstrated that its dumping margin were lower than the highest prior margin, it would have provided information demonstrating such was the case. According to the Petitioner, the Respondents’ argument, taken to its logical conclusion, would require the Department to maintain a separate AFA rate for every producer/exporter combination, a separate AFA rate for every producer/exporter combination for each production process utilized by that producer/exporter combination, and a separate AFA rate for every producer/exporter combination for each unique set of material inputs utilized by that producer/exporter combination. The Petitioner concludes that this is not feasible. The Petitioner notes that, according to the CIT, “it is not uncommon for Commerce to assign uncooperative Respondents the highest margin assigned to any respondent in an antidumping review.” See Fujian Machinery & Equipment Import & Export Corporation v. United States, 276 F. Supp.2d 1371, 1381 (Ct. Int’l Trade 2003). Lastly, the Petitioner contends that Congress stated that information from prior determinations is exempt from the corroboration requirement. As such, the Department should continue to utilize the 139.31 percent margin as the AFA rate for those producers/exporters that warranted the application of FA with adverse inferences.

With respect to the Respondents’ argument that the AFA rate is punitive and does not reflect a reasonable dumping margin, the Petitioner counters that the AFA rate selected by the Department is neither punitive nor unreasonable. The Petitioner, citing section 776(b) of the Act, states that, when selecting an AFA rate, the Department is authorized to use information derived from the petition, a final determination in the investigation, any prior administrative review, or any other information placed on the record. The Petitioner further argues that it is the Department’s practice to select as an AFA rate and assign respondents who fail to cooperate with the Department’s requests for information the highest margin determined for any party in the LTFV investigation or in any administrative review. See the Preliminary Results of this proceeding.

The Petitioner maintains that the AFA rate used in the Preliminary Results for bars/wedges was based on verified information submitted in the eighth review (i.e., the 1998-1999 administrative review). This AFA rate, the Petitioner argues, was published by the Department, amended by the Department, reviewed by the CIT, remanded and reviewed by the Department, sustained by the CIT, and affirmed by the Court of Appeals for the Federal Circuit. Accordingly, the AFA rate calculated in the eighth administrative review is a final margin. Therefore, the Petitioner maintains that although the determinations in the ninth, twelve, and thirteen reviews are currently under appeal, the Department should not deviate from its regular practice of selecting an AFA rate. Rather, the Petitioner argues, the Department should continue to use the 139.31 percent as

an AFA rate in the final results.

#### Department's Position:

We disagree with the Respondents that the AFA and PRC-wide rate of 139.31 percent should be disregarded because its calculation contains subsidized prices and because the rate is inappropriate and punitive.

The opportunity for the Respondents to challenge the Department's calculation of the 139.31 percent rate in the eighth review has passed. See the 12<sup>th</sup> Hand Tools Memo at Comment 21 and 13<sup>th</sup> Hand Tools Memo at Comment 3. Moreover, as discussed further below, the rate calculated in the eighth review was affirmed by the Court of Appeals for Federal Circuit, and is therefore a final margin.

This rate, as the Petitioner notes, was published by the Department, amended by the Department, reviewed by the CIT, remanded and reviewed by the Department, sustained by the CIT, and affirmed by the Court of Appeals for the Federal Circuit. See *Shandong Huarong General Corp v. United States*, 159 F.Supp.2d 714 (CIT 2001) (remanding final results); *Shandong Huarong General Corp v. United States*, 177 F.Supp.2d 1304 (CIT 2001) (sustaining remand), *aff'd* 60 Fed. Appx. 797 (Fed. Cir. 2003). Accordingly, the rate calculated in the eighth administrative review is a final margin. This rate is also the PRC-wide rate of 139.31 percent for bars/wedges published in the most recently completed administrative review of this antidumping order. See 13<sup>th</sup> Hand Tools Memo at Comment 3. Thus, this rate is the highest rate in the proceeding and was calculated using verified information provided by TMC during the 8<sup>th</sup> administrative review of the bars/wedges order. Accordingly, we continue to find that this rate, instead of other recently calculated rates, is an appropriate AFA rate because it offers a more adequate incentive to induce Huarong, Iron Bull, and TMC to cooperate in this proceeding. We note that this rate has been applied to TMC for the 11<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup> reviews, and to Huarong for the 13<sup>th</sup> review, as an AFA rate. The companies nevertheless continue to fail to cooperate to their best of their ability. Although the Department's decision to apply the 139.31 percent rate to Huarong (in a remand) was not affirmed by the CIT, this rate remains the cash deposit rate for Huarong, as well as for Iron Bull, TMC, and the PRC-wide entity. In addition, SMC, which is the only respondent receiving a calculated rate for the bars/wedges order in this administrative review, has multiple individual transaction margins that exceed 139.31 percent. See *SMC Bars/Wedges Final Analysis Memo* at Attachment 1. Therefore, we continue to find that the AFA rate of 139.31 percent for bars/wedges is both reliable and relevant and, thus, is corroborated to the extent practicable pursuant to section 776(c) of the Act.

We disagree with the Respondents' argument that the AFA rate at issue is punitive and inappropriate. Under section 776(c) of the Act, the Department is granted a wide discretion in its selection of secondary information, i.e., the AFA rate, as long as the Department can determine, to the extent practicable, that the AFA rate has probative value. See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Doc. No.

103-316 at 870. The Department's application of AFA has been found to be "punitive" when the Department rejects a lower margin in favor of a higher margin that is demonstrably less probative of current conditions. See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990) ("Rhone Poulenc"). However, the court also found that the Department may appropriately infer that the highest prior margin is the most probative evidence of current conditions because, if it were not so, the respondent would have produced current evidence demonstrating that the margin would be less. *Id.* Moreover, the SAA provides that the Department will, in corroborating the secondary information, satisfy itself that the secondary information to be used has probative value. In doing so, the Department examines the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total AFA a calculated margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin. See Preliminary Results of Antidumping Duty Administrative Review: Grain-Oriented Electrical Steel from Italy, 61 FR 36551, 36552 (July 11, 1996) ("GOES from Italy").

We also disagree with the Respondents' arguments that the AFA rate of 139.31 percent is inappropriate and unrelated to the Respondents' data because it was based upon "a different factory, for different bars, by a different seller with different input steel, and unverified data." We find that the rate selected as AFA, 139.31 percent, for Huarong's, Iron Bull's, and TMC's respective "agent" sales of bars/wedges, is appropriate for this final results. Because the AFA rate is based on TMC's actual sales data, it bears a "rational relationship" to TMC. See *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1339 (CIT 2002); *China Steel Corp. v. United States*, 306 F. Supp. 2d 1291, 1304 (CIT 2004). We also find that this rate "bears a rational relationship" to Huarong and Iron Bull's commercial activity due to their respective roles in the invoicing scheme. Furthermore, this rate "bears a rational relationship" to Huarong and Iron Bull because they export products identical to those of TMC covered by the bars/wedges order and compete for sales within the U.S. market.

The Department recognizes that, under certain circumstances, the Department may diverge from its standard practice of selecting as the AFA rate the highest rate in any segment of the proceeding. In *Fresh Cut Flowers from Mexico*, the Department did not use the highest margin in the proceeding as best information available because that margin was based on another company's aberrational business activity and was unusually high. See Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico, 61 FR 6812 (February 22, 1996) ("*Fresh Cut Flowers from Mexico*"). In other cases, the Department has not used the highest rate in any segment of the proceeding as the AFA rate because the highest rate was subsequently discredited. See *D&L Supply Co. v. United States*, 113 F. 3d 1220, 1221 (Fed. Cir. 1997) ("*D&L*") (the Department will not use a margin that has been judicially invalidated). However, we find that the Respondents are incorrect that we should disregard the AFA rate of 139.31 percent because none of these circumstances are present with regard to this rate.

With respect to the Respondents' arguments that the Department can calculate and assess

dumping margins on all of the sales made by Huarong, including agent sales, because they fully disclosed every sale of subject merchandise during the POR, we disagree. As stated in Comment 1 above, the Department found and the CIT sustained the Department's determination in previous reviews that the Respondents' piecemeal disclosure of the "agent" sales schemes constituted a failure to cooperate to the best of their ability. Because Huarong engaged in "agent" sales during the POR, therefore, it is inappropriate to calculate Huarong's margin based on Huarong's submitted sales data.

Although we agree with Huarong that the CIT found that the Department did not adequately corroborate the 139.31 percent rate as an AFA rate for Huarong in the 9<sup>th</sup> review litigation, that decision is not final and conclusive.<sup>11</sup> With respect to TMC, and while the CIT remanded that matter, the 139.31 percent rate was calculated based on TMC's own data in the 8<sup>th</sup> review and is therefore applicable as it is representative of that company's experience. Therefore, as the litigation is not final, the 139.31 percent, a rate calculated in a prior proceeding, remains available, and in this case appropriate, AFA/PRC-wide rate for the bars/wedges order.

### Comment 3: Separate Rates for TMC and SMC

In the Preliminary Results, the Department assigned TMC and SMC a separate rate. The Petitioner contends that regardless of whether SMC and TMC identify themselves as "all-people owned" or "state-owned" entities, the record contains substantial evidence that TMC and SMC are both state-owned entities ("SOE"), and subject to government control. Reiterating its deficiency comments<sup>12</sup> on SMC's and TMC's responses, the Petitioner claims that neither SMC nor TMC qualify for a separate rate and therefore, TMC and SMC should not be granted a separate rate in the final results of this review.

According to the Petitioner, an SOE in the PRC is a nationally owned enterprise where the central government is the ultimate authority for the enterprise's operations and the disposition of its assets, even though the SOE may have been assigned to the provincial or local government for supervision and management.<sup>13</sup> The Petitioner further notes that the State-Owned Assets Supervision and Administration Commission (SASAC), created in 2003, which was authorized

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<sup>11</sup> In our subsequent remand, we respectfully noted our disagreement with the court's findings regarding the corroboration methodology available to the Department. See Final Results of Redetermination Pursuant to Court Remand Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation V. United States, Court No. 01-00858 (Mar. 3, 2006).

<sup>12</sup> The Petitioner refers to its deficiency comments regarding SMC's Section A, C, and D questionnaire responses, submitted on October 24, 2005 and January 30, 2006, respectively. In addition, the Petitioner refers to its October 24, 2006, and January 17, 2006, deficiency comments on TMC's Sections A, C, Appendix VII, D, and supplemental questionnaires of April 6, June 9 and 22, July 1, August 11, and September 1, 2005, Questionnaires, and TMC's December 15, 2005, supplemental questionnaire response.

<sup>13</sup> See the Petitioner's January 31, 2006, comments on SMC's Supplemental A Questionnaire Responses dated January 20, 2006, Exhibit 1 for a discussion on state ownership ("Jan. SMC Deficiency Comments").

and created following the 10<sup>th</sup> National People's Congress for the sole purpose of exercising ownership rights, concentrating its efforts on 196 of China's largest SOEs, rather than act as a regulator. The Petitioner maintains that these SOEs were put directly under SASAC's control and the new agency assumed all the SOE ownership, personnel, and administrative functions that were dispersed among various central government agencies.

Furthermore, the Petitioner submits that soon after it was founded, SASAC issued "interim regulations," which authorized SASAC to remove and appoint personnel in the central SOEs, to approve transfers of state-owned shares or equity interests, to approve plans for restructuring, to approve disposition of assets, to work out regulations and draft laws on state asset management, and to guide the establishment of local state-owned management agencies. Provincial and local governments were also directed to set up local variants of the SASAC, which would collect under one agency in each province and locality the various dispersed provincial and local SOEs, and administer them all. Id.

The Petitioner claims the SASAC has full ownership rights with respect to the companies under its supervision. Citing Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), and Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"), where the Department has established de jure and de facto criteria with which to determine whether a company should be granted a separate rate, the Petitioner maintains that the SASAC exercises de jure and de facto control over these companies.

To support its arguments, the Petitioner further asserts that while SASAC's interim regulations declare that it will only provide "guidance" to local SASACs, there is little doubt that central SASAC's guidance is binding, as demonstrated by central SASAC's routine establishment of pronouncements and rules which bear on locally managed assets, without any concession that local governments have the right to refuse to implement them. As an example, the Petitioner notes that central SASAC has recently disclosed its plans to close more than 2,000 SOEs.<sup>14</sup> The Petitioner argues, while central SASAC may work with its local counterparts to decide which 2,000 SOEs will be forced into closure, there is little doubt that the central agency is "calling the major policy shots." The Petitioner further states that in some cases, SASAC's interference is creating resentment among local officials, and in at least one instance, the central agency has directly intervened in the business of a locally monitored SOE. In addition, the Petitioner indicates that central SASAC appears to be closely monitoring the local progress of the conversion of noncirculating state-owned shares into circulating shares.

The Petitioner claims that the Department's de jure analysis has traditionally focused on a narrow set of PRC-wide laws and regulations. According to the Petitioner, the regulations issued by the central SASAC since 2003 should be recognized as centralizing SASAC's control over SOEs.

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<sup>14</sup> The Petitioner notes that only 169 SOEs were directly under SASAC's control at the end of August 2005. Id.

Through these regulations, the Petitioner claims that central SASAC has set up local offices whose actions are increasingly coordinated by central SASAC, redirected the manner in which provincially and locally-controlled government assets are sold or transferred, regulated MBOs at the provincial and local level, and coordinated the sale of stock in state-owned companies. Id. The Petitioner further argues that SASAC's control over SOEs with respect to the ability to hire and fire directors and management, to supervise board of directors, to take control of enterprise budgets and profits, or exercise ownership rights on behalf of the government, counteracts TMC and SMC's claim to a separate rate, on both a de jure and de facto basis.

Accordingly, the Petitioner maintains that because the PRC government has control over SOEs and exercises this control through SASAC, SMC and TMC are both state-owned entities and subject to government control. Therefore, the Department should reverse its preliminary finding that SMC and TMC should be granted a separate rate and instead apply the PRC-wide rate to these companies.

SMC and TMC maintain that they are not SOEs and are entitled to separate rates. Citing the Department's Preliminary Results, SMC and TMC counter the Petitioner's allegation that they are not entitled to a separate rate because they are SOEs, which the Petitioner claims are controlled by the PRC government through SASAC. Specifically, SMC and TMC note that the Department stated in the Preliminary Results that "{t}he evidence provided by SMC, Huarong, TMC, and Iron Bull supports a finding of a de jure and de facto absence of governmental control over their export activities...Therefore, the Department has preliminarily found that SMC, Huarong, TMC and Iron Bull have established prima facie that they qualify for separate rates established by Silicon Carbide and Sparklers." Based on the Department's statement, SMC and TMC claim that the Department was aware of the record evidence and nevertheless still concluded in the Preliminary Results that SMC and TMC are entitled to separate rates. In addition, SMC and TMC assert that the Department has granted separate rates to SMC and TMC in previous reviews of HFHTs. Accordingly, SMC and TMC maintain that the Department should continue its determination that SMC and TMC are not SOEs and are entitled to separate rates.

#### Department's Position:

We agree with SMC and TMC that the information on the record of this administrative review demonstrates that both SMC and TMC have demonstrated a de jure and de facto independence from government control with respect to their export activities.

The Department assigns separate rates in NME cases only if the applicant demonstrates an absence of both de jure and de facto governmental control over its export activities in accordance with the separate-rates test criteria. See Sigma Corp. v. United States, 117 F. 3d 1401 (Fed. Cir. 1997) ("Sigma"). To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in Sparklers 56 FR at 20589, as expanded in Silicon Carbide 59 FR at 22586-22587. Under this analysis, exporters in non-market economies are entitled to a separate rate only when they can demonstrate

a de jure and de facto absence of government control with respect to exports. Evidence supporting, though not requiring, a finding of an absence of de jure government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; or 3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20588. In addition, our analysis of an absence of de facto government control over exports is based upon: 1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22586-87.

As discussed in the Preliminary Results, the Department analyzed TMC and SMC's section A and supplemental responses, and found that each company had demonstrated a de jure and de facto independence from PRC government control.

As noted above, the Department's practice is to examine the de jure and de facto criteria set forth in *Sparklers* and *Silicon Carbide* with respect to a respondent or separate rate applicant's export activities. It is the Department's practice to examine controls over the investment, pricing, and output decision-making process at the individual firm level (see, i.e., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61758 (November 19, 1997); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997)), and not the activities of its owner or its owner's parent company.

With respect to the de jure criteria listed above, the Petitioner has placed on the record interim regulations, which allegedly undermine the independence of TMC and SMC under the Company Law of the PRC. See SMC Deficiency Comments at Exhibit 1. However, we note that the Department has consistently found an absence of de jure control when a company's operations were governed by the Company Law of the PRC, and when it supplied business licenses and export licenses, each of which have been found to demonstrate an absence of restrictive stipulations and decentralization of control of the company. See *Honey From the People's Republic of China: Preliminary Results, Partial Rescission, and Extension of Final Results of Second Antidumping Duty Administrative Review*, 69 FR 77184, 77186-87 (December 27, 2004), and unchanged in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, FR 71 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum ("Sawblades Memo") at Comment 9. The information submitted by the Petitioner

addresses only potential control by SASAC over CISRI, rather than any actual control of the PRC government over the numerous individual export decisions of TMC and SMC that took place during the POR. Both TMC and SMC placed numerous documents on the record that were examined for the Preliminary Results. The questionnaire responses of TMC and SMC also demonstrate an absence of de jure government control by the absence of restrictive stipulations associated with each company's export license and business license and through the legislative enactments, which pertain to the companies, that protect the operational and legal independence of companies incorporated in the PRC. See Respondent's May 10, 2005, submission; SMC July 21, 2005, supplemental Section A questionnaire response at Exhibit 4; SMC October 25, 2005, questionnaire response at Exhibit 13.

In addition, as noted in the Preliminary Results, pursuant to the criteria set forth in Silicon Carbide to demonstrate a de facto absence of government control, both TMC and SMC submitted information in their questionnaire responses that supported the de facto absence of government control.

#### TMC

TMC has also placed on the record information with respect to its de facto independence. TMC (1) certified that its export prices are neither set by or subject to the approval of a government agency (see TMC's May 13, 2005, Section A response at A-6); (2) placed on the record a number of documents that demonstrate an absence of government control over negotiation and signing of contracts including documents related to price negotiation on U.S. sales, and complete sales and export documentation (Id. at Exhibit 10; see also TMC's September 1, 2005 supplemental response at Exhibit 2, and TMC's October 25, 2005, supplemental response at Exhibit 7); (3) placed on the record documentation that it has autonomy over the selection of its own management and board of directors (see TMC's May 13, 2005, Section A response at A-7 and TMC's December 15, 2005 supplemental response at A-1 and Exhibit 2); and (4) provided financial statements demonstrating the independent distribution of profit (see TMC's May 13, 2005, Section A response at Exhibit A-11, and TMC's July 27, 2005 supplemental response at Exhibit 26). Therefore, the Department finds that TMC has demonstrated de facto control over its export activities.

#### SMC

SMC has also placed on the record information with respect to its de facto independence. SMC (1) certified that its export prices are neither set by or subject to the approval of a government agency (see SMC July 21, 2005, supplemental questionnaire response at 14 ); (2) placed on the record a number of documents that demonstrate an absence of government control over negotiation and signing of contracts including documents related to price negotiation on U.S. sales, and complete sales and export documentation (see SMC May 13, 2005, section A questionnaire response at Exhibit 10; SMC July 21, 2005, supplemental questionnaire response at Exhibits 6, 12, and 16); (3) placed on the record documentation that it has autonomy over the



selection of its own management and board of directors (see SMC October 25, 2005, questionnaire response at Exhibits 8 and 9); (4) provided financial statements and board resolution minutes regarding the independent distribution of profit (see SMC May 13, 2005, section A questionnaire response at Exhibit 12). Therefore, the Department finds that SMC has demonstrated de facto control over its export activities.

Because no new direct evidence has been placed on the record with respect to the separate rates status of SMC and TMC, and because both companies have demonstrated that they operate their export activities free of de jure and de facto government control, the Department has determined, for these final results, that both SMC and TMC should receive a separate rate.

#### Comment 4: Rejecting the Respondents' Case Brief

Citing its letter dated April 11, 2006,<sup>15</sup> the Petitioner alleges that because the Respondents failed to timely serve their case brief on Petitioner on April 7, 2006,<sup>16</sup> the Petitioner's ability to participate in this stage of the proceeding is substantially prejudiced. Accordingly, the Petitioner argues that the Department should have rejected Respondents' case brief, rather than granting an extension of the submission deadline for all parties.<sup>17</sup>

To support its arguments, the Petitioner quotes the Department's Preliminary Results which reads, "{i}nterested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results." In addition, the Petitioner cites 19 CFR 351.303(f)(3)(i).<sup>18</sup> The Petitioner argues that because the Preliminary Results were published on March 8, 2006, the Petitioner and the Respondents were required to submit their case briefs by April 7, 2006. However, according to the Petitioner, instead of serving the Petitioner by hand delivery on the day of filing, over-night delivery, or courier service on the day following filing, as mandated by the Department's regulations, the Respondents served the Petitioner via first class mail. Consequently, the Petitioner received Respondents' case brief on April 10, 2006, instead of April 7, 2006, per the regulations.

Furthermore, citing 19 CFR 351.309(d), which requires parties to submit their rebuttal brief

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<sup>15</sup> See Letter from Wiley Rein & Fielding to the Hon. Carlos Gutierrez, Re: Heavy Forged Hand Tools From the People's Republic of China: Case Brief of Shandong Huarong Machinery Co., Ltd., Tianjin Machinery Import & Export Corporation, Iron Bull Industrial Co., Ltd., and Shandong Machinery Import & Export Company, dated April 11, 2006 ("Rebuttal Brief Extension Letter").

<sup>16</sup> The Petitioner did not receive the Respondents' case brief until April 10, 2006.

<sup>17</sup> See Letter from the Department to All Interested Parties, Re: 14<sup>th</sup> Administrative Review of Heavy Forged Hand Tools from the People's Republic of China: Rebuttal Case Brief Deadline Extension, dated April 11, 2006 ("Rebuttal Brief Extension Letter").

<sup>18</sup> 19 CFR 351.303(f)(3)(i) requires that where a party has designated a person within the United States to receive service on its behalf, service of case briefs on that party must be effectuated by hand service on the day of filing, or otherwise by overnight delivery or courier service on the day following filing.

“within five days after the time limit for filing the case brief,” the Petitioner contends that, due to what it considers the Respondents’ blatant disregard of the Department’s regulations, the Respondents received an extra three days to develop and draft its rebuttal. Despite the Department’s decision to extend the submission deadline for rebuttal briefs which provided the Petitioner with more time to draft its rebuttal brief, the Petitioner argues that the fact remains that the Respondents received three days more than the Petitioner to develop and present their arguments. Consequently, the Petitioner alleges that the Respondents have effectively been rewarded for failing to follow the Department’s regulations, and the Petitioner was substantially prejudiced by the Respondents’ failure to properly serve Petitioner.

Finally, the Petitioner makes reference to a CIT decision where an Italian exporter challenged the initiation of the sixth antidumping administrative review (“the sixth review”) and the application of an AFA rate on the grounds that it never received service; the CIT held void ab initio the initiation of the sixth review and directed the Department to rescind the sixth review as to this Italian exporter. See Pam, S.p.A. v. United States (“Pam”), 395 F. Supp. 2d 1337, 1343-44 (Ct. Int’l Trade 2005). The Petitioner claims that the Department must consider whether the Respondents’ failure to serve the Petitioner properly constitutes “harmless error,” as the CIT finds it important for parties to comply with regulations governing service of process because the procedures confer significant procedural benefits upon the parties involved in the review, ensure the transparency of the review process, and create certainty and predictability in the administrative review process.

Based on the foregoing, the Petitioner claims that the Department should have rejected the Respondents’ case brief instead of extending the submission deadline for rebuttal briefs for all parties.

The Respondents did not comment on this issue in their rebuttal brief.

#### Department’s Position:

We agree that the Petitioner was not served by the Respondents in accordance with 19 CFR 351.303(f)(3)(i). However, 19 C.F.R. 351.309(d)(1) allows the Department to alter the time limits for rebuttal briefs. Accordingly, the Department followed its past practice in such situations by granting an extension to all interested parties for submitting their rebuttal briefs. See Rebuttal Brief Extension Letter. Consequently, the Petitioner and all interested parties received the full five-day period, as allowed under 19 CFR 351.309(d), to develop and present their rebuttal brief arguments.

With respect to Petitioner’s arguments based on Pam, we note that we do not agree with that decision and that it is currently on appeal. See Pam vs. United States, Fed. Cir. No. 06-1084, appeal docketed Nov. 18, 2005. The Respondents in this case did serve the Petitioner, albeit untimely. As stated above, the Department followed its common practice to extend the due dates for all interested parties to submit rebuttal briefs. As the extended deadline accounted for the

Respondents' failure to properly serve the Petitioner, Respondents' initial failure to serve Petitioner did not result in any harm or prejudice to the Petitioner. Guangdong Chemicals Import & Export Corporation v. United States ("Guangdong"), 414 F. Supp.2d 1330. Thus, the Respondents' case brief will remain on the record.

Comment 5: Addition of an HTS Number to the Scope of the Order

The Petitioner claims that in the course of this review, the Department found that subject merchandise is being entered under HTSUS number 8205.59.5510. The Petitioner requests that the scope language be revised to include this HTSUS number for convenience purpose. The Petitioner recognizes that this change to the scope does not amend the dispositive description, and thus, does not require a scope inquiry. However, the Petitioner claims that this change will assist CBP with proper enforcement of the order because the HTSUS numbers are used to flag documentation requiring further review.

The Respondents counter that the Department's MUTT scraper scope inquiry decision is currently before the CIT. See Memorandum from Holly A. Kuga, Senior Office Director, AD/CVD Operations, Office 4 to Barbara E. Tillman Acting Deputy Assistant Secretary, for Import Administration, Final Scope Ruling – Request by Olympia Industrial Inc., for a Scope Ruling on the MUTT<sup>®</sup>, dated December 9, 2004. The Respondents further argue that this HTSUS number might be used for merchandise other than MUTT scrapers. Accordingly, the Respondents maintain that it would not be appropriate to amend the scope language to include HTSUS number 8205.59.5510.

Department's Position:

We agree with the Petitioner that HTSUS number 8205.59.5510 should be added to the scope of the axes/adzes order. We recognize that this particular HTSUS number is a basket category. On July 24, 2006, the CIT sustained the Department's MUTT scraper scope ruling. See Olympia Industrial, Inc. v. United States and Ames True Temper, Slip Op. 06-110 (Ct. Int'l Trade July 24, 2006) ("Olympia").

Adding this HTSUS subheadings to the scope provides convenience and will facilitate CBP's enforcement of the order. Thus, we added the HTSUS number 8205.59.5510 to the scope of the order; however, the written description remains dispositive.

Comment 6: Application of Packing Materials and the By-Product Offset in the Calculation of Normal Value

According to the Petitioner, the underlying Indian financial statements capture all costs, whether they are for direct materials, scrap offsets, or packing materials, even if they are not identified as a separate line item or specifically mentioned elsewhere. The Petitioner argues that the Department has recognized this in past cases and cites to the decision made in the Notice of Final

Determination of Sales at Less than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Part thereof from the People's Republic of China, 69 FR 35,296, 35,300 (June 24, 2004) (“Ironing Tables”). In Ironing Tables, the Department was not able to identify separately packing costs in the financial statements of the surrogate company but stated that it was reasonable to conclude that all expenses are included in all income statements and thus the packing costs were included in the surrogate company data. Id.

Based on the above-stated principal regarding financial statements, the Petitioner makes two arguments regarding the Department's calculation of normal value.<sup>19</sup> The Petitioner explains that it made the same arguments during the final results of the 13<sup>th</sup> Administrative review of heavy forged hand tools and notes that it continues to disagree with the Department's position from that review. See 13<sup>th</sup> HFHTs Final, at Comment 8J.

First, the Petitioner contends that the Department should have added the Respondents' packing costs to the total cost of manufacture (“TOTCOM”) before applying the SG&A expense ratio. According to the Petitioner, the Department incorrectly added packing materials to normal value (“NORMVAL”) in the Preliminary Results. The Petitioner notes that in the 13<sup>th</sup> HFHTs Final, the Department rejected including packing materials in TOTCOM because the Department was unable to determine whether the Reserve Bank of India (“RBI”) data contains evidence of how packing materials were treated and that there is no reference to packing materials in the calculations of surrogate financial ratios.

Second, the Petitioner argues that the Department should subtract by-products from the calculated cost of manufacture (“COM”) rather than the calculated normal value. According to the Petitioner, the Department incorrectly deducted by-products from NORMVAL in the Preliminary Results. The Petitioner notes that in the 13<sup>th</sup> HFHTs Final, the Department's decision to continue applying the by-product offset to NORMVAL was also due to an absence of information pertaining to the surrogate company's treatment of by-products sales.

The Petitioner concludes that based on the decision in Ironing Boards, it is therefore reasonable to conclude that the packing costs and by-product offset are included in the financial data used in the instant review and the Department should therefore revise its calculation of NORMVAL so that packing expenses are added to TOTCOM and by-products are subtracted from COM.

The Respondents did not comment on this issue in their rebuttal brief.

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<sup>19</sup> The Department's current calculation is:  
COM = DIRECT\_MATERIAL + ENERGY + LABOR;  
OVHRD = COM \* OHSV;  
TOTCOM = COM + OVHRD;  
SGA = TOTCOM \* SGASV;  
PROFIT = (TOTCOM + SGA) \* PROFITSV;  
NORMVAL = TOTCOM + SGA + PROFIT + PACKING - BY-PRODUCTS.

Department's Position:

The Department disagrees with the Petitioner.

Regarding the Petitioner's argument on the application of packing materials, the Department notes that the RBI data does not contain any evidence of how packing materials were treated. As explained in the Sawblades Memo at Comment 9, 13<sup>th</sup> Hand Tools Memo and Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 69 FR 33626 (June 16, 2004), and accompanying Issues and Decision Memorandum (“Garlic Memo”), at Comment 6, it is not appropriate to include packing expenses in the COM to which the surrogate financial ratios are applied when it cannot be ascertained that packing expenses are in the surrogate financial ratio calculations. See Sawblades Memo, at Comment 9; 13<sup>th</sup> Hand Tools Memo, at Comment 8J; and Garlic Memo, at Comment 6. In those cases, the Department could not identify where and to what extent packing expenses were accounted for in the surrogate company financial ratios. We concluded in those cases that applying the surrogate financial ratios to production costs that include amounts for packing materials would distort the amount of overhead, SG&A, and profit in the margin calculation. To avoid this distortion, the Department accounted for packing expenses in normal value. *Id.* In the instant review, a careful review of the RBI Bulletin reveals that there is no reference to packing materials in the calculations of surrogate financial ratios. The Department cannot assume, as the Petitioner suggests, that packing materials must be captured by TOTCOM. Accordingly, there is no reason for the Department to apply packing material costs to any amount other than to NORMVAL. We note that the Ironing Tables cited by Petitioner is prior to the recent hand tools and sawblades determinations and is not reflective of the Department's current practice.

With respect to the application of the by-product offset to NORMVAL, it is the Department's current practice to apply the financial ratios in a manner consistent with the facts of the case and with the accounting methodology used by the surrogate companies to account for by-product revenue. It is appropriate to apply the surrogate financial ratios to the Respondents' COM in a manner consistent with the surrogate companies' treatment of COM. See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) (“FFF Final Results”), and accompanying Issues and Decision Memorandum at Comments 5, 6 & 12; see also Notice of Final Antidumping Duty Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 710005 (December 8, 2004) (“Vietnam Shrimp Final”), and accompanying Issues and Decision Memorandum at Comment 4B. In the Vietnam Shrimp Final, the Department found “no mention of by-products sales” in the surrogate company's financial report. *Id.* The Department has further stated that where the surrogate statement does not indicate how the surrogate company has treated its production (if any) of a by-product, then we will subtract the by-product offset from normal value. See Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 28274 (May 17, 2005) (“Lock Washers Final Results”), and accompanying Issues and Decision

Memorandum at Comment 5; Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 17; Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) (“Glycine Final Results”); Vietnam Shrimp Final at 4B. Therefore, the Department determined that in the absence of other information to the contrary, the by-product offset should be applied to NORMVAL. *Id.* In the instant review, a careful review of the RBI Bulletin reveals that there is no reference to by-products in the calculations of surrogate financial ratios. The Department cannot assume, as the Petitioner suggests, that by-product sales must be captured by COM. As the RBI Bulletin contains no information with respect to by-product sales, there is no basis on which the Department can find that the COM amount in the RBI Bulletin is net of by-product sales. Accordingly, there is no reason for the Department to apply the by-product offset to any amount other than to NORMVAL.

For the foregoing reasons, the Department continues to treat packing expenses and by-products in accordance with the Preliminary Results.

Comment 7: Referral to Customs and Border Protection (“CBP”) Regarding Evasion of These Orders by Huarong, TMC and Iron Bull

Council Tool notes that the record in this review supports a conclusion that SMC, Huarong, TMC, and Iron Bull were all involved in schemes to evade the antidumping duty law. Citing Appendix B to 19 CFR Part 171 at (C)(2), (C)(3), Council Tool states that SMC, Huarong, TMC, and Iron Bull do not appear to have exhibited reasonable care or competence in transactions involving subject merchandise.

Council Tool requests that if the final results continue to find the pattern of practices described in the Preliminary Results, the Department should refer this matter immediately to CBP for further investigation.

The Petitioner also claims that the Department was aware that certain CBP documents provided by the Respondents appear problematic for various reasons. Specifically, the Petitioner refers to its October 21, 2005, deficiency comments on TMC’s responses, which address the Petitioner’s concerns regarding CBP data. The Petitioner urges the Department to instruct the CBP to review certain TMC entries and determine if liquidation of the entries has been suspended and if duties are still outstanding.

Similarly, citing its own Pre-preliminary Comments at 10-11 dated February 7, 2006, and the attachment to the Department’s letter to Iron Bull dated February 9, 2006, the Petitioner alleges that numerous entries made by Iron Bull also contain inaccurate manufacturer information which leads to incorrect assessment or liquidation of Iron Bull’s entries. The Petitioner argues that certain entries were not correctly assessed or liquidated.<sup>20</sup>

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<sup>20</sup> See Iron Bull July 27, 2005, supplemental Section A Questionnaire Response at 1.

Finally, the Petitioner questions whether certain antidumping duties that were hand-written on certain entry summaries were included in the total duties collected. See, i.e., the attachment to the Department's letter to Iron Bull dated February 9, 2006.

The Petitioner claims that these improper entries provide further evidence of a concerted scheme by the Respondents to evade the proper application of antidumping duties by any means possible. Accordingly, the Petitioner requests that the Department apply AFA to all producers and categories of goods affected by this misreporting, and follow-up with CBP regarding all of the aforementioned issues.

The Respondents did not comment on this issue in their rebuttal brief.

#### Department's Position:

We have observed that certain discrepancies pertaining to imports of subject merchandise from certain respondents may affect CBP's assessment of entries made by these respondents and will work with CBP to address this issue, as we did in a recent case. See response to Comment 1 above; see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14,170 (March 21, 2006) and accompanying Issues and Decision Memorandum ("FFF 1<sup>st</sup> AR Final") at footnote 2.

#### Comment 8: Clerical Errors from the Preliminary Results

##### A. Calculation of Per Unit Importer Assessment Rates

The Petitioner states that in the Preliminary Results the Department inadvertently miscalculated the per unit importer assessment rates ("CBPENTVALU") for SMC and Huarong. See Huarong Axes/Adzes Prelim Analysis Memo; SMC Hammers/Sledges Prelim Analysis Memo; SMC Bars/Wedges Prelim Analysis Memo. According to the Petitioner, the Department's calculation of CBPENTVALU did not include the deductions of international freight expenses marine insurance ("MARNINU"), warehousing ("WAREHU"), and containerization ("CONTAINU"), where applicable.

The Respondents did not comment on this issue in their rebuttal brief.

#### Department's Position:

We agree with the Petitioner. For the Preliminary Results, the calculation of CBPENTVALU did not account for international freight expenses MARNINU, WAREHU, and CONTAINU because these expenses were calculated separately,<sup>21</sup> and thus when the Department calculated

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<sup>21</sup> Generally, in the Department's boilerplate SAS program, all international and U.S. movement charges, including U.S. duties, from loading onto the export vessel to delivery in U.S., are accounted for under the variable "INTLMOVEU." However, due to additional programming needed to calculate MARNINU, WAREHU, and

CBPENTVALU, these expenses were not accounted for in that calculation. For the final results, we have revised the location in our SAS programs of our calculation of MARNINU, WAREHU, and CONTAINU so that they will be classified under INTLMOVEU. Therefore, the calculation of CPBENTVALU will account for these international freight expenses. See SMC Bars/Wedges Final Analysis Memo; SMC Hammers/Sledges Final Analysis Memo; Huarong Axes/Adzes Final Analysis Memo.

B. SMC Missing Packing Variable

According to the Petitioner, the Department did not include one of SMC's packing factors in the calculation of PWEIGHT or the calculation of PACKING. Therefore, the Petitioner notes that the Department miscalculated the packing weight ("PWEIGHT") and normal value in SMC's hammers/sledges program. See SMC Hammers/Sledges Prelim Analysis Memo.

The Respondents did not comment on this issue in their rebuttal brief.

Department's Position:

We agree with the Petitioner. We inadvertently miscalculated normal value because one of the packing factors was not included under the PACKING variable.<sup>22</sup> The Department also notes that the variable PWEIGHT<sup>23</sup> was inadvertently miscalculated due to the same missing packing variable. We have revised our calculation of PWEIGHT and the PACKING. See SMC Hammers/Sledges Final Analysis Memo.

C. CBP Instructions

The Petitioner observed that the Department did not include a rate for Iron Bull in the draft liquidation instructions for the bars/wedges order.

The Respondents did not comment on this issue in their rebuttal brief.

Department's Position:

The Department disagrees with the Petitioner. Since Iron Bull is receiving AFA in the bars/wedges order, it is unnecessary to list Iron Bull separately on the liquidation instructions.

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CONTAINU, these expenses were separate line items in SAS and thus accounted for individually in the calculation of USNETPRI.

<sup>22</sup> The calculation of normal value includes the variable PACKING, which is the sum of all the packing inputs and labor.

<sup>23</sup> PWEIGHT is the sum of packing factor weights to add to the net weight.



### III. Company Specific Issues

#### Comment 9: Huarong

##### A. Axes/Adzes Rate

Huarong states that the Department calculated its rate for the axes/adzes order based solely on its sales of MUTT scrapers. Huarong notes that on December 9, 2004, the Department determined that MUTT scrapers were within the scope of the axes/adzes order, but that this determination is currently pending before the CIT since one of Huarong's U.S. customers contested the Department's scope determination. Huarong argues that since its U.S. customer will likely prevail in its case before the CIT, the Department should exclude Huarong's sales of MUTT scrapers from its calculations.

Huarong also argues that the Department failed to verify and corroborate the calculated AFA and PRC-wide rate. Huarong contends that an AFA rate must be corroborated because "Congress clearly intended that such rates should be reasonable and have some basis in reality." See F.Ili De Cecco, 216 F.3d. at 1034. Huarong argues that in order to corroborate the margin, the Department should examine the reliability and relevance of the information used. As noted above, Huarong contends that the Department improperly included MUTT scrapers in its calculation of the PRC-wide and AFA rates. Huarong also argues that the Department should exclude any subsidized prices and/or aberrational values from its calculations. Lastly, Huarong states that the Department improperly applied the PRC-wide rate to Huarong's sales of axes/adzes instead of calculating a separate rate.

The Petitioner argues that the Department should reject Huarong's argument that the MUTT scraper should not have been included in the calculation of the AFA rate. The Petitioner notes that pursuant to a respondent/importer's scope inquiry, the Department determined that the MUTT scraper was within the scope of the axes/adzes order. The Petitioner contends that although the decision is currently under consideration by the CIT, the Department should not deviate from its original findings or general practices in the interim. Moreover, the Petitioner notes that Huarong failed in its efforts to obtain injunctive relief from the imposition of antidumping duties on MUTT scrapers, and its claim that it is likely to succeed in their challenge is contradicted by the CIT's opinion issued early this year. See Olympia Industrial Inc. v. United States, Slip Op. No. 06-4 (CIT January 6, 2006).

Additionally, the Petitioner notes that Huarong incorrectly claimed that the Department did not apply a separate calculated rate to Huarong's sales of axes/adzes. The Petitioner states that the Department's calculation memorandum clearly demonstrates that the Department did in fact calculate a separate rate for Huarong's sales of axes/adzes. The Petitioner states that Huarong's preliminary calculated rate for axes/adzes actually exceeded the AFA rate from the prior review, and thus became the new AFA rate. The Petitioner lastly notes that the Department applied AFA to the PRC-wide entity in the Preliminary Results, and that the rate applied to the PRC-wide entity

was the AFA rate based upon Huarong's separate, calculated rate for axes/adzes from the instant review.

#### Department's Position:

We agree with the Petitioner. As noted by both parties, the Department has ruled that MUTT scrapers sold by Huarong to the United States market are within the scope of the antidumping duty order on axes/adzes. See Final Scope Ruling – Request by Olympia Industrial Inc., for a Scope Ruling on the MUTT, dated December 9, 2004. In accordance with this scope determination, Huarong reported its U.S. sales of MUTT scrapers in the section C databases for axes/adzes that it filed in response to the Department's original and supplemental questionnaires. We further note that our MUTT scope determination has been recently upheld by the CIT. See Olympia, Slip Op. 06-110.

We also find that Huarong's claims that the axes/adzes AFA rate has not been corroborated and that the Department improperly applied the PRC-wide rate to Huarong are without merit. As the Petitioner notes, and as was clearly articulated in the Preliminary Results, we calculated a separate rate for Huarong based upon the sales and FOP data contained in its certified questionnaire responses submitted during the course of this review. See Huarong Axes/Adzes Prelim Analysis Memo. (During this review, the Department also reviewed the PRC-entity. Because the PRC-entity failed to cooperate to the best of its ability by not responding to the Department's questionnaire, the Department has applied AFA to the PRC-wide entity. Consistent with the Department's practice, the Department applied the highest calculated rate to the PRC-entity as the AFA rate. Because the calculated rate for Huarong in the instant review exceeded the PRC-wide rate from the prior review, the rate calculated for Huarong was applied to the PRC-wide entity as the AFA rate and thus became the new PRC-wide rate.) We also applied this rate to those companies which are receiving total AFA for the axes/adzes order (SMC, TMC and Iron Bull) because it is the highest rate calculated for the axes/adzes order and provides adequate incentive to induce cooperation from Respondents. See Rhone Poulenc, 899 F.2d at 1191; see also Ta Chen Stainless Steel Pipe, Inc. v. United States, 24 CIT 841 (2000).

Regarding Huarong's assertion that the Department should exclude any subsidized prices and/or aberrational values from its calculations for the axes/adzes order, Huarong did not offer any specific arguments or guidance as to what particular surrogate values may contain such subsidized and/or aberrational prices. Therefore, since Huarong failed to offer particular, specific, and objective evidence supporting its assertion, there is no basis for us to consider changing the surrogate value methodology used in the Preliminary Results for the calculation of Huarong's axes/adzes rate. See China Nat'l Mach. Im. & Ex. Corp. v. United States, 264 F.Supp. 2d 1229, 1239 (CIT 2003).

Furthermore, as explained in the Preliminary Results, the AFA rate for axes/adzes applied to the other companies has been corroborated in accordance with section 776(c) of the Act. For the following reasons, this AFA rate satisfies the requirement set forth in F.lli De Cecco "that such

rates should be reasonable and have some basis in reality” because the AFA rate is a rate calculated for Huarong in the instant review, based upon sales and factor data submitted by Huarong in the instant review for merchandise subject to the axes/adzes order (see Olympia, Slip Op. 06-110 (sustaining scope ruling that MUTTs are within the scope of the axes/adzes order)). As noted above, the Department has made minor changes to Huarong’s calculated rate for these final results. The changes relevant to the axes/adzes rate are outlined in the Huarong Axes/Adzes Final Analysis Memo. As previously noted, this separate, calculated rate for Huarong exceeds the previous PRC-wide rate, and thus also becomes the new PRC-wide rate for these final results.

## B. Bars/Wedges Rate

In addition to addressing the bars/wedges AFA rate in Comment 2, Huarong argues that in light of the CIT’s decision in Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation v. United States, 28 CIT 139, slip op. 05-129 (September 27, 2005), the Department, in its remand, applied the lower AFA rate of 47.88 percent to it for the bars/wedges order. Huarong contends that the current AFA rate of 139.31 percent is thus at least inappropriate to Huarong and should be revised.

The Petitioner responded to the applicability of the bars/wedges AFA rate in Comment 2 above.

### Department’s Position:

We disagree with Huarong. Although we did apply the lower AFA rate of 47.88 percent for bars/wedges due to a remand from the CIT, we applied that rate under protest. In addition, such litigation is not final. Therefore, for the purposes of these final results, and for the reasons described above in Comment 2, we will continue to apply the AFA rate of 139.31 percent to Huarong for the bars/wedges order.

## Comment 10: SMC

### A. Affiliation Determination

SMC contends that it is not affiliated with Customer A<sup>24</sup> and therefore, the Department erred in applying neutral facts available to SMC’s sales of bars/wedges and hammers/sledges to Customer A for the Preliminary Results. See Memorandum from Nicole Bankhead, Case Analyst, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9, 14<sup>th</sup> Administrative Review of HFHTs from the People’s Republic of China (“PRC”): Affiliation, dated February 28, 2006 (“Affiliation Memo”). SMC argues that its only connection with Customer A is through SMC’s subsidiary company’s ownership in Iron Bull, a producer and exporter of subject merchandise. According to SMC, there is no direct control between SMC and Customer A that could characterize their relationship as one of affiliated parties. SMC asserts that

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<sup>24</sup> Please see SMC Hammers/Sledges Final Analysis Memo, SMC Bars/Wedges Final Analysis Memo, and Affiliation Memo for information regarding Customer A.

the main issue is whether a relationship of control exists between SMC that could constitute an affiliation of “indirect control” between SMC and Customer A. SMC further notes that the Department will not find that “control” exists unless “the relationship has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or foreign like product.” See Section 771(33)(F) of the Act.

SMC reiterates that, based on the totality of the answers stated in prior questionnaire responses, it does not have any control over Iron Bull’s affairs or operations. SMC explains that the former Iron Bull was named “Qingdao Iron Bull Tools Co., Ltd.” and was fully owned by SMC. SMC states that it sold its shares of Qingdao Iron Bull Tools Co., Ltd. to a U.S. investor.<sup>25</sup> SMC then explains that its subsidiary company<sup>26</sup> assigned Liu Xuecai and Gu Xiuying to hold the positions of board of directors at Iron Bull. According to SMC, neither Liu Xuecai nor Gu Xiuying, both general managers at SMC, perform any business, management, or decision-making roles for Iron Bull. SMC further notes that neither Liu Xuecai nor Gu Xiuying receive any benefits from Iron Bull nor do they have the authority or duty to sign agreements or make decisions. According to SMC, the only papers Liu Xuecai and Gu Xiuying sign are the company Charter and meeting minutes of the board of directors. SMC continues that Liu Xuecai and Gu Xiuying receive no business information from Iron Bull since they perform no business functions and rarely attend Iron Bull’s board meetings. SMC further contends that Iron Bull is fully controlled by its U.S. investors.

Additionally, SMC argues that its subsidiary company, Iron Bull, Customer A, and Customer A’s subsidiaries did not have the following during the POR: 1) shared sales information; 2) involvement in each other’s production and pricing decision, 3) shared facilities or employees, or 4) significant transactions between any affiliated producers or exporters. SMC therefore concludes that the foregoing facts, that were provided in its previous questionnaire responses, attest to the fact that no relationship of “control” exists between SMC or its subsidiaries and Iron Bull that could establish an affiliation of “indirect control” between SMC and Customer A within the meaning of section 771(33)(F) of the Act.

Conversely, the Petitioner argues that the evidence on the record supports a finding that SMC and Iron Bull are affiliated given the control SMC exercises over Iron Bull’s affairs and operations. According to the Petitioner, SMC and Iron Bull meet the definition of affiliated parties under section 771(33)(G) of the Act. The Petitioner contends that SMC’s general managers are in a position of control and have access to documents such as bank accounts at SMC. The Petitioner contends that these same managers at SMC also have the authority to sign documents at Iron Bull such as the company charter and other legally binding documents. Furthermore, the Petitioner notes that Iron Bull’s charter clearly states that business decisions are the responsibility of the board members. The Petitioner points to additional evidence on the record that supports the

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<sup>25</sup> The U.S. investor is part of the single entity we are calling “Customer A.” See Affiliation Memo at 4-5.

<sup>26</sup> The Department determined in the Preliminary Results that SMC and its subsidiary companies constitute a single entity. See Affiliation Memo at 6-8.

affiliation between SMC and Iron Bull, such as Iron Bull's statement that it is affiliated with SMC and also information contained on certain Iron Bull Invoices. Due to the proprietary nature of this information, please see Affiliation Memo at 3 for further details; see also Iron Bull May 13, 2005, questionnaire response at Exhibit A-10.

The Petitioner maintains that the record evidence clearly supports that SMC has sufficient control over Iron Bull to demonstrate affiliation. Accordingly, the Petitioner contends that the Department should reject SMC's argument that the Department erroneously determined that SMC and Customer A are affiliated. The Petitioner concludes that the Department should continue treating SMC's sales to Customer A during the POR as affiliated party sales.

Department's Position:

We agree with the Petitioner.

In the Preliminary Results, the Department articulated its reasons for finding SMC affiliated with Customer A. See Affiliation Memo. Specifically, we found that evidence on the record supported finding that Customer A, an importer of subject merchandise, and SMC, an exporter of subject merchandise, are affiliated within the meaning of section 771(33)(F) of the Act through their joint ownership of Iron Bull. SMC argues that the evidence on the record does not support a finding that SMC exerts direct control over Customer A. Moreover, SMC contends that the record evidence also does not support a finding of "indirect control" between SMC and Customer A through their joint ownership of Iron Bull.

The legal framework is provided under section 771(33) of the Act:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Statement of Administrative Action (SAA) to the Uruguay Round Agreement states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.<sup>27</sup>

SMC’s argument that there is no evidence of control between SMC and Customer A reflects a misunderstanding of the statutory definition of affiliation. SMC and Customer A are affiliated because they are both in a position to control Iron Bull. In *Mitsubishi Heavy Industries, Ltd. v. United States*,<sup>28</sup> the court held that “{t}he statutory definition of affiliated parties at 19 U.S.C. § 1677(33)(F) {section 771(33)(F) of the Act} does not require that MHI and Trading Company exercise control over each other. The statute requires only that ‘two or more person,’ control a third person.” See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 70 FR 28271 (May 17, 2005). In the instant review, SMC and Customer A jointly own Iron Bull. Additionally, both SMC and Customer A appoint Iron Bull’s board of director members. Furthermore, Iron Bull’s board members are in a position to sign legally binding documents at Iron Bull. Affiliation, here, does not turn upon whether SMC indirectly controls Customer A, or vice versa.

We note that section 771(33) of the Act does not require evidence of actual control; rather, it expressly provides that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” See *Kaiyuan Group Corp. v. United States* 391 F.Supp.2d 1317 (CIT 2005) (sustaining Department’s decision that third company in a position to control two respondents); see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27297-98 (May 19, 1997). “A company may be in a position to exercise restraint or direction, for example, through “corporate . . . groupings {and} . . . joint venture agreements . . .” *SAA* at 838; see also 19 CFR 351.102(b). Additionally, the Department may consider control to arise from the potential to manipulate price and production. See *Certain Welded Carbon Standard Steel Pipe and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review*, 52 FR 47632, 47638 (September 10, 1997).

Consistent with our practice in finding affiliation among parties involved in joint ventures, we find that SMC’s and Customer A’s joint venture in Iron Bull (in which both Customer A and

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<sup>27</sup> See *SAA*, H.R. Doc. 103-316 (vol. I) at 838.

<sup>28</sup> See *Mitsubishi Heavy Industries, Ltd. v. United States*, 15 F. Supp. 2d 807, 832 (CIT 1998).

SMC have the ability to exert control) indicates that SMC and Customer A are affiliated parties. See Memorandum from Charles Riggall to Wendy J. Frankel Re: Administrative Review of the Antidumping Duty Order on Persulfates from the People's Republic of China Affiliation, dated August 1, 2005 (Public Version) ("Persulfates Memo") placed on the record on February 28, 2006, see Memo to the File from Nicole Bankhead, Case Analyst dated February 28, 2006.<sup>29</sup> Therefore, since SMC and Customer A are affiliated parties, we find that SMC's POR sales to Customer A should be treated as affiliated party sales in accordance with section 772(b) of the Act.

#### B. Partial Adverse Facts Available for CEP Sales

Council Tool notes that the Department found SMC to be affiliated with one of its U.S. customers, "Customer A," through their joint ownership of another PRC company involved in the production and export of subject merchandise. See Preliminary Results at 11584. Council Tool argues that Customer A has not tried to respond to the Department's request for downstream sales information and that this failure to respond warrants the application of an adverse inference. Specifically, according to Council Tool, an adverse inference is appropriate because both SMC and Company A have failed to cooperate with the Department's request for a limited amount of sales data. In sum, Council Tool contends that SMC failed to cooperate to the best of its ability and therefore the Department must use facts available to analyze SMC's sales of subject merchandise in the instant review.

The Petitioner notes that the Department applied neutral facts available to SMC's sales to Customer A for the preliminary results but should reevaluate its decision for the final results. See SMC Bars/Wedges Prelim Analysis Memo at 1-2; SMC Hammers/Sledges Prelim Analysis Memo at 1-2. The Petitioner asserts that for the final results the Department should apply total adverse facts available to SMC's sales to its affiliate Customer A because Customer A failed to report its downstream sales information to the first unaffiliated customer.

The Petitioner first argues that SMC refused to provide the requested information despite having additional time and being given multiple chances to respond. According to the Petitioner, SMC should not be able to dictate to the Department what information it will or will not provide. Additionally, the Petitioner contends that SMC has delayed this proceeding by requiring the Department to issue multiple supplementals. Furthermore, the Petitioner notes that Customer A was involved in this proceeding prior to its bankruptcy filing and thus the Department should not condone selective non-participation. The Petitioner also argues that Customer A has the resources

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<sup>29</sup> See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Administrative Review, 70 FR 46476, 46478 (August 10, 2005) ("Persulfates from the PRC Preliminary Results"). The Persulfates Memo outlines the affiliation between Degussa USA, an importer of Persulfates, and Shanghai AJ, a Chinese exporter of subject merchandise, through their joint venture ownership in Degussa-AJ. Specifically, the Persulfates Memo recommends finding that "Degussa Importer, which includes Degussa USA, and Shanghai Exporter, which includes Shanghai AJ, are affiliated under Section 771(33)F of the Act through their joint venture partnership in Degussa-AJ, the producer of subject merchandise." See Persulfates Memo at 6.

to participate in its bankruptcy proceeding.

Furthermore, the Petitioner contends that the Department should apply total adverse facts available instead of neutral facts available to SMC's sales of bars/wedges and hammers/sledges to Customer A. The Petitioner maintains that SMC is statutorily obligated to provide the Department with the requested information in order to calculate accurate rates. Additionally, the Petitioner notes that SMC was given multiple opportunities to provide the requested information, but that SMC refused.

The Petitioner continues that the Department determined that Iron Bull and Customer A used another manufacturer's ID and paid inaccurate cash deposit rates for Iron Bull's self-produced subject merchandise in order to circumvent the anti-dumping duty order. See Memorandum from Cindy Robinson, Case Analyst, and Alex Villanueva, Program Manager, through James C. Doyle, Director, AD/CVD Operations, Office 9 to the File, 14<sup>th</sup> Administrative Review of Heavy Forged Hand Tools from the People's Republic of China: Application of Adverse Facts Available to Iron Bull Industrial Co., Ltd., dated February 28, 2006 ("Iron Bull AFA Memo"). Based on what it considers Customer A's previous record in colluding with Chinese respondents to circumvent the antidumping order, the Petitioner concludes that it can be assumed that Customer A colluded with SMC and either did not collect the necessary information before filing for bankruptcy or is withholding the data from the Department. The Petitioner concludes that SMC should receive adverse facts available for the information which it refused to provide the Department and most likely colluded with Customer A to conceal.

The Petitioner further maintains that the Department should apply the AFA rate to the affiliated party sales rather than partial neutral facts available based on both parties non-cooperation with the Department's request for information. In sum, the Petitioner contends that the Department should apply AFA to SMC for failing to cooperate to the best of its ability with the Department's request for information

SMC rebuts the Petitioner's argument that the Department should apply total adverse facts available to SMC's sales to Customer A based on Customer A's failure to provide downstream sales information to the first unaffiliated U.S. customer. SMC reiterates its stance that it is not affiliated with Customer A. Furthermore, SMC maintains that it has provided the Department with all the information at its disposal. SMC notes that it attempted to create a CEP database, but was unable to do so. Thus, SMC contends that it submitted all available information in its possession to the Department and without Customer A's cooperation, SMC is unable to propose an alternative for creating the requested CEP database. SMC concludes that it should not be penalized based on Customer A's failure to comply with the Department's request for information.

Department's Position:

We agree with the Petitioner, in part. As noted above in Comment 10A, we are treating SMC's sales to Customer A as affiliated party sales. Since Customer A did not submit sales data



pertaining to its downstream U.S. sales of merchandise it purchased from SMC to the first unaffiliated U.S. customer, we find, as we did in the Preliminary Results, and pursuant to sections 776(a)(2)(A) and 776(a)(2)(B) of the Act, that the application of partial facts available to SMC sales to Customer A is appropriate because Customer A withheld its CEP sales information and otherwise failed to provide the information in a timely manner and in the form requested.

Furthermore, based on the record evidence, we find that Customer A, SMC's affiliated importer, itself an interested party, did not act to the best of its ability in responding to the Department's requests for information. Pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party fails to cooperate by not acting to best of its ability in responding to the Department's requests for information.

On December 29, 2005, the Department issued a questionnaire to SMC, requesting the downstream sales; SMC's response was due on January 17, 2006. On January 12, 2006, SMC requested an extension to respond to the questionnaire. Customer A declared bankruptcy on January 13, 2006. See SMC January 20, 2006, questionnaire response. On January 20, 2006, SMC responded to the Department's request, maintaining it was unable to provide the requested information because Customer A had declared bankruptcy. Id. Shortly before the issuance of the Preliminary Results, the Department requested specific information regarding the bankruptcy proceedings from both Customer A and SMC as well as renewed its request for the downstream sales. See the Department's February 17, 2006, letter to Customer A; see also the Department's February 17, 2006, letter to SMC.

In the Preliminary Results, we preliminarily applied neutral facts available but noted that we would revisit the application of facts available for these final results. Following the issuance of the Preliminary Results, after several extensions, Customer A submitted its questionnaire response providing additional information on its bankruptcy status but no downstream sales information. See Customer A March 17, 2006, questionnaire response. Among other things, Customer A claimed it did not have access to its records and, therefore, could not provide information regarding the downstream sales. Id. Noting, among other things, that Customer A would need access to its documents to conclude the bankruptcy proceedings, on July 26, 2006, the Department granted Customer A another opportunity to provide additional clarifications regarding how Customer A's bankruptcy proceeding hindered its ability to provide the CEP sales data requested on December 29, 2005. See the Department July 26, 2006, letter to Customer A. Customer A did not respond to this questionnaire in any way.

Cooperation to "the best of [an interested party's] ability" requires the party to "do the maximum it is able to do." Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003). We find that Customer A did not exert maximum effort in responding to the Department's requests for information. The Department requested the downstream sales from SMC on December 29, 2005, and Customer A did not file for bankruptcy until after the Department requested the downstream sales. In its March 17, 2006 response, Customer A stated that it planned to liquidate completely and put its materials in permanent storage by March 24, 2006. See Customer A

March 17, 2006 questionnaire response. Thus, Customer A had access to all of its records relating the POR U.S. sales throughout much of this proceeding, and particularly when the Department asked for the downstream sales data of Customer A. Notwithstanding its continued access to the documents needed to report downstream sales, Customer A provided no explanation as to why it could not submit the necessary information at least before March 24, 2006, almost three months after the Department's initial request. Despite numerous opportunities to provide the Department with the CEP sales data for its downstream sales in the U.S. market, Customer A failed to provide such information.

We thus find, as we did in the Preliminary Results, and pursuant to sections 776(a)(2)(A) and 776(a)(2)(B) of the Act, that the application of partial facts available to SMC sales to Customer A is appropriate because Customer A withheld its CEP sales information and otherwise failed to provide the information in a timely manner and in the form requested. Furthermore, we find that Customer A, an interested party and SMC's affiliated importer, did not act to the best of its ability in responding to the Department's requests for information. Consequently, pursuant to section 776(b) of the Act, the Department is drawing an adverse inference in selecting from among the facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870.

In Comment 10A, we address SMC's contentions regarding affiliation with Customer A. Customer A, as an importer and SMC's U.S. affiliate responsible for SMC's U.S. sales, is an interested party and has failed to act to the best of its ability by failing to respond to the Department's request for information. The information requested is critical to the Department's ability to calculate an appropriate margin. Contrary to SMC's argument, the application of partial AFA does not improperly penalize SMC. The Department has limited the application of AFA to SMC sales through Customer A, thereby specifically addressing Customer A's failure.

As partial AFA, we are applying the highest transaction margin from SMC's sales to its other U.S. customers to those sales it made to Customer A. See the SMC Hammers/Sledges Final Analysis Memo and the SMC Bars/Wedges Final Analysis Memo.

#### C. Rate to Apply to SMC

The Petitioner notes that the Department correctly determined that SMC and Iron Bull are affiliated parties. However, the Petitioner disagrees with the Department's decision to apply a different, lower rate to SMC than it did to Iron Bull. The Petitioner contends that the Department should apply Iron Bull's higher rate to SMC due to Iron Bull's manipulation of customs entries. Additionally, the Petitioner argues that the Department should consider collapsing SMC and Iron Bull based on certain evidence from CBP data. See Petitioner's Case Brief at 13 for specific details.

In support of its position that SMC should receive Iron Bull's higher rate, the Petitioner points to the fact that Iron Bull was using other manufacturer I.Ds to export subject merchandise and thus

received a lower dumping margin. Due to the proprietary nature of this information, please see Iron Bull AFA Memo at 8 for further details. The Petitioner concludes that Iron Bull and SMC are basically the same company and their relationship poses a great risk for circumvention of the Department's order.

The Petitioner continues that the accuracy of the information provided by SMC during the course of the instant review is called into question by certain data reported by Iron Bull. Specifically, the Petitioner argues that this is another example of SMC's failure to be forthright with the Department's request for information. The Petitioner points to the fact that SMC stated that the manufacturer ID it reported varies by its suppliers. See SMC July 21, 2005, Questionnaire Response at page 1 and Exhibit 1. However, the Petitioner argues that SMC was not fully forthcoming with information pertaining to the manufacturer I.Ds it reported in its questionnaire responses. According to the Petitioner, this supports that the information reported by SMC is unreliable and inaccurate and that SMC manipulates information for its own benefit.

The Petitioner argues that the problem at hand is that companies engage in customs fraud to obtain a lower antidumping duty rate. Therefore, according to the Petitioner, if the Department assigns SMC a lower antidumping rate than Iron Bull, a strong incentive remains for these two companies to continue manipulating customs entries. The Petitioner suggests that the only way to deter companies from engaging in customs fraud is to prosecute them for customs fraud and thus eradicate the benefits that companies receive by participating in that conduct. According to the Petitioner, the Department should assign the higher rate to both companies so that neither company will receive any benefits from defrauding the U.S. government.

In the alternative, the Petitioner asserts that there is sufficient record evidence to support collapsing SMC and Iron Bull pursuant to 19 CFR 351.401. Specifically, the Petitioner points to certain data reported on multiple customs forms 7501. See Petitioner Case Brief at 14 for specific details. Therefore, the Petitioner contends that the Department should collapse Iron Bull and SMC and apply an adverse inference based on their manipulation of customs entries and SMC's withholding of information regarding information reported on multiple customs form 7501.

SMC did not respond to this specific issue in its rebuttal brief.

#### Department's Position:

The Department disagrees with the Petitioner. The Department finds that there is insufficient evidence on the record to support collapsing Iron Bull and SMC.

Our collapsing regulation pertains to producers. Because SMC is not a producer, the regulation is not strictly applicable. Nevertheless, the Department's analysis is guided by the factors set forth in 19 CFR 351.401(f). See Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d 1323, 1342 (CIT 2003) ("Hontex1") (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation). Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are

affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the regulations provide that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 12764, 12774 (March 16, 1998); see also Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan, 62 FR 51427, 51436 (October 1, 1997). Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.

We examined the evidence on the record relating to the relationship between SMC and Iron Bull consistent with these guidelines. First, we find that Iron Bull and SMC are affiliated in accordance with sections 771(33)(E) and (F) of the Act as explained above in Comment 10A.

Having determined that the two companies are affiliated, the Department examines whether Iron Bull and SMC have production facilities for similar or identical products that would not require "substantial retooling ... in order to restructure manufacturing priorities." See 19 CFR 351.104. The second criterion is not met because SMC is not a producer of subject merchandise. However, the Department notes that under certain situations it may be appropriate to find exporters to be a single entity in order to account for export decisions. See Hontex1, 248 F. Supp. 2d 1323, 1342. However, as explained with respect to the third factor, the Department finds that the facts in this case do not warrant treating SMC and Iron Bull as a single entity.

The record of this proceeding does not support a finding that a significant potential for manipulation exists. The third factor of the Department's collapsing analysis, *i.e.*, the significant potential for manipulation, requires consideration of three sub-factors: (1) the level of common ownership; (2) the extent to which managerial employees or directors of one firm also sit on the board of the other firm; and (3) whether operations are intertwined. See 19 CFR 351.401(f)(2). In determining whether there is a significant potential for manipulation, the Department considers the totality of the circumstances, analyzing the criteria set forth in 351.401(f)(2). As discussed in the Affiliation Memo and Comment 10A, Iron Bull is jointly controlled by SMC and Customer A. We do not find that SMC's ownership investment and board appointments, as detailed in the Affiliation Memo, present a significant potential for manipulation when considered apart from Customer A's ownership investment and board appointments.

As articulated in Comment 10A, Customer A and SMC jointly own Iron Bull and also both appoint Iron Bull's board members. SMC and Customer A have joint ownership of Iron Bull. See Affiliation Memo for specific ownership percentages. Furthermore, both SMC and Customer

A appoint the board of director members for Iron Bull. See Affiliation Memo for the specific number of board members each company appoints. Additionally, while there are interactions between SMC and Iron Bull, the interactions do not indicate that their operations are intertwined in such a manner that the two companies operate as one entity. For instance, there is no indication that the companies coordinate their sales activities or that SMC purchased subject merchandise from Iron Bull during the POR. Accordingly, the Department continues to find affiliation between SMC and Iron Bull, but that treating the two as a single entity is not warranted in this case based on the facts on the record.

Thus, the Department concludes that there is a lack of substantial evidence, defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” on the record of this proceeding. See Consol. Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed. 126 (1938). While the Department must weigh the evidence and may draw reasonable inferences therefrom, the existence of substantial evidence is determined nonetheless “by considering the record as a whole, including evidence that supports as well as evidence that ‘fairly detracts from the substantiality of the evidence.’ ” Huaiyin Foreign Trade Corp. v. United States, 322 F.3d at 1374 (Fed. Cir. 2003) (quoting Atl. Sugar, 744 F.2d at 1562). Taken as a whole, the Department finds that substantial evidence does not support the Petitioner’s contention that SMC and Iron Bull should be treated as a single entity.

We further disagree with the Petitioner’s argument that SMC was not forthcoming regarding the manufacturer IDs reported on the 7501s. Specifically we note that SMC stated on page one of its October 25, 2005, questionnaire response that since “the CF 7501 were filled by SMC’s customers, SMC does not understand what the manufacturer ID stands for, so SMC is unable to explain why there are three different manufacture Ids.” Thus, the record evidence does not indicate that SMC was less than forthcoming regarding this issue.

In sum, the Department disagrees with the Petitioner that there is sufficient evidence to constitute treating SMC and Iron Bull as a single entity in the instant proceeding. We note that the Petitioner does not articulate exactly what record evidence supports the conclusion that SMC and Iron Bull constitute a single entity.

The Petitioner’s second point, that the Department should apply Iron Bull’s higher antidumping duty rate, is now moot because the Department is not finding them to be a single entity. Additionally, the Department notes that the Petitioner did not specify which higher rate in which order that SMC should receive considering SMC is already receiving the PRC-wide rate in two<sup>30</sup> out of the four orders. See Comment 10.D. Therefore, SMC will continue to receive its own, separate, calculated rate for the final results in the hammers/sledges and bars/wedges orders.

#### D. AFA for SMC’s Non-Reported Sales

Council Tool contends that the Department should continue applying AFA to SMC’s sales of picks/mattocks and axes/adzes during the POR. Council Tool notes that the Department

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<sup>30</sup> SMC is receiving AFA in the picks/mattocks and axes/adzes orders.

discovered that SMC was not fully forthcoming in its responses to the Department's requests for sales data. Specifically, an adverse inference was warranted based on the discrepancy between what SMC originally stated about having no sales of picks/mattocks and axes/adzes and what was discovered after reviewing SMC's Customs forms 7501s. Therefore, the Department was forced to rely on alternative data because SMC failed to provide the requested and necessary data. See Preliminary Results at 11,584.

SMC did not comment on this issue in its rebuttal brief.

#### Department's Position:

The Department agrees with Council Tool that the Department should continue applying AFA to SMC's sales of picks/mattocks and axes/adzes. In the Preliminary Results, the Department determined that an adverse inference was warranted because SMC first withheld information regarding its sales of picks/mattocks and axes/adzes during the POR and then refused to provide the relevant U.S. sales and FOP data for those sales. No new information was placed on the record that would change our position. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, we find it appropriate to base SMC's dumping margin for axes/adzes and picks/mattocks on facts available.

#### Comment 11: AFA for Iron Bull's Sales of Bars/Wedges

Council Tool urges the Department to uphold its preliminary findings in the final results by applying adverse facts available AFA to Iron Bull's sales of bars and wedges during the POR. Citing the Department's Preliminary Results at 11,586, Council Tool argues that Iron Bull was given four opportunities (including the original section C questionnaire) to provide and revise its U.S. sales database. However, Iron Bull's responses were not clear and lacked narrative explanation, and all four of its U.S. sales databases contained numerous significant errors and were unreliable, and therefore, could not be used to calculate antidumping rates for bars/wedges.

In addition, Council Tool argues that, based on the Department's Preliminary Results, Iron Bull and its U.S. importer were involved in a purposeful, knowing invoicing scheme to use other manufacturers' names on CBP forms to secure lower dumping duty rates and to circumvent the dumping duty orders. Therefore, Council Tool contends that the Department should continue to apply AFA for Iron Bull's sales of bars/wedges, because Iron Bull not only failed to provide accurate, reliable, and usable U.S. sales data, but also circumvented the dumping duty order for bars/wedges through the use of an invoicing scheme, which amounts to what it considers is a clear failure on Iron Bull's part to cooperate to the best of the company's ability in this review.

#### Department's Position:

We agree with Council Tool that the Department should continue to apply an AFA rate to Iron Bull's sales of bars and wedges. In the Preliminary Results, the Department noted that Iron Bull's original U.S. sales data submitted to the Department's section C Questionnaire was unclear,

erroneous and lacked explanation. Consistent with section 782(d) of the Act, the Department provided three additional opportunities for Iron Bull to correct its U.S. sales database since its original section C submission, but Iron Bull continued to submit unclear, inconsistent, unreliable, and unusable information. Because Iron Bull repeatedly failed to provide the requested information in the form or manner requested by the Department pursuant to section 776(a)(2)(B) of the Act, the Department determined that Iron Bull failed to cooperate by not acting to the best of its ability to comply with our requests for information. Therefore, the Department determined that an adverse inference is warranted for Iron Bull under section 782(e) of the Act. See Preliminary Results and Iron Bull AFA Memo.

Furthermore, the Department finds that Iron Bull, along with Huarong and TMC, actively participated in the “agent” sales of bars and wedges during the POR. The Department finds that these Respondents’ agent sales scheme have significantly impeded the instant proceeding, pursuant to section 776(a)(2)(C) of the Act. In addition, the Department also finds that use of the “agent” sales schemes by these Respondents impeded our ability to complete this administrative review under section 751 of the Act, impose antidumping duties and issue instructions to CBP to assess the correct antidumping duties, as mandated by sections 731 and 736 of the Act. See Huarong AFA Memo; Iron Bull AFA Memo; TMC AFA Memo; Preliminary Results at 11585-7; and Comment 1 above. Therefore, the Department determined that it is appropriate to base Iron Bull’s, Huarong’s, and TMC’s dumping margin for their “agent” sales of bars and wedges on AFA.

Based on the foregoing, the Department continues to apply an AFA rate in these final results for Iron Bull’s sales of bars and wedges during the POR.

#### RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of review and the final weighted-average dumping margins in the Federal Register.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date \_\_\_\_\_